

**EPA'S PROPOSED 111(d) RULE FOR EXISTING
POWER PLANTS AND H.R. _____, THE RATE-
PAYER PROTECTION ACT**

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON ENERGY AND

COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

APRIL 14, 2015

Serial No. 114-29



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

95-890 PDF

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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¹The information has been retained in committee files and also is available at <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=103312>.

²The information has been retained in committee files and also is available at <http://docs.house.gov/meetings/IF/IF03/20150414/103312/HHRG-114-IF03-Wstate-HofferM-20150414-SD001.pdf>.

³The information has been retained in committee files and also is available at <http://docs.house.gov/meetings/IF/IF03/20150414/103312/HHRG-114-IF03-20150414-SD004.pdf>.

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TUESDAY, APRIL 14, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:04 a.m., in room 2123 of the Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Olson, Barton, Shimkus, Pitts, Latta, Harper, McKinley, Pompeo, Kinzinger, Griffith, Johnson, Long, Ellmers, Flores, Mullin, Hudson, Upton (ex officio), Rush, McNerney, Engel, Green, Capps, Doyle, Castor, Sarbanes, Yarmuth, Loebsack, and Pallone (ex officio).

Staff present: Nick Abraham, Legislative Clerk; Gary Andres, Staff Director; Charlotte Baker, Deputy Communications Director; Leighton Brown, Press Assistant; Allison Busbee, Policy Coordinator, Energy and Power; Tom Hassenboehler, Chief Counsel, Energy and Power; Alexa Marrero, Deputy Staff Director; Mary Neumayr, Senior Energy Counsel; Peter Spencer, Professional Staff Member, Oversight; Christine Brennan, Democratic Press Secretary; Jeff Carroll, Democratic Staff Director; Michael Goo, Democratic Chief Counsel, Energy and the Environment; Caitlin Haberman, Democratic Professional Staff Member; Rick Kessler, Democratic Senior Advisor and Staff Director, Energy and the Environment; and John Marshall, Democratic Policy Coordinator.

Mr. WHITFIELD. Good morning. I would like to call this hearing to order. And this morning's hearing is going to begin with a discussion of the Ratepayer Protection Act, a draft bill that would add several commonsense safeguards to the EPA's proposed 111(d) rule for existing power plants, and which is referred to by the agency as the Clean Power Plan.

I want to welcome Acting Assistant Administrator McCabe, as well as a diverse group on the second panel representing those impacted by the proposed rule. And I just want to make the comment that we appreciate your being here, Ms. McCabe, very much. As you know, we have fundamental, divisive, really different views on this particular rule, but we do look forward to your testimony. We will have a lot of questions, and appreciate you being here with us.

And now I would like to recognize myself for a 5-minute opening statement.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

I would like to say that in reading Ms. McCabe's testimony, I was struck by the comment that she was not aware of any instance in the last 25 years when Congress has enacted legislation to stop implementation or stay implementation of an air rule during a judicial review. To do so here she said would be an unprecedented interference with EPA's effort to fulfill its duties under the Clean Air Act. Now, I believe the key word in her statement is "unprecedented." Anyone familiar with the Clean Air Act should not in any way be surprised that Congress would try to stop, slow down or, as Ms. McCabe said, interfere with efforts to rush implementation of the rule for existing source performance for electric generating units. Why? We think you are overstepping your authority. We think you are now legislating. Experts in the Clean Air Act have described this proposed rule as extreme, radical, a power grab. One of the best characterizations of the rule was stated by Professor Laurence Tribe, the highly regarded liberal scholar of constitutional law at Harvard University. Since this rule is more about changing energy policy than anything else, he said burning the Constitution should not be a part of our national energy policy.

Whoever thought EPA would be attempting to become the energy czar for America? Professor Tribe said, at bottom, the proposed rule hides political choice and frustrates accountability. It forces States—forces States—to adopt policies that will raise energy costs and proved deeply unpopular once the people realized what is happening, while cloaking these policies in the garb of State choice, even though, in fact, the policies are set and compelled by EPA.

The EPA thumbs its nose at democratic principles by confusing the chain of decisionmaking between Federal and State regulators to avoid transparency and accountability.

Now, when EPA Administrator Gina McCarthy testified before the Senate Environment and Public Works Committee on July 23, 2014, she said, the great thing about the power plan is that it is an investment opportunity. This is not about pollution control. And the regulatory impact analysis of the proposed rule states that the impact of reduced climate effects has not been quantified. In other words, EPA does not claim that the proposed rule would affect the climate in a significant way. However, Ms. McCabe, in her testimony today, says we must address climate change. It is common mantra in the administration, from the President through every political appointee, and yet this unprecedented rule, which will increase electricity rates, affect reliability, cost millions of dollars, make EPA the energy czar for America, will not have a significant impact on climate change. Everyone acknowledges that fact. So that raises the question, Why is EPA, at the direction of the President, rushing it through? EPA obviously wants this completed before the 2016 elections. Is it being done to create a legacy in the international arena for President Obama? Perhaps someone has decided it is urgent that the electricity business in America be radically changed. Experts familiar with this process have been taken aback by the convoluted arguments that have been developed to legitimize this proposed rule. As far as we know, it is the first time

in the history of EPA where the agency lawyers felt compelled to include a separate legal justification for the rule—104 pages, to be exact.

So we find ourselves in a situation where EPA, not Congress, is writing a new law, State Attorneys General are filing suit to stop EPA, State regulators are pleading for help, electric generating companies are facing uncertainty, consumers are finding electricity rates going up, and no one knows for sure what the impact will be on reliability or, for that matter, the real reason this regulation is being rushed to market.

In the history of the Clean Air Act, EPA has never been this bold. So if actions are not delayed by Congress, or if they are affirmed by the courts, EPA will fundamentally redefine and reshape its regulatory reach for the next generation of rule makers in a way typically reserved for legislative bodies.

So with the very utmost respect, people are asking Congress for help in reining in this agency, and that is why we have introduced this legislation, and we look forward to comments about it.

[The prepared statement of Mr. Whitfield follows:]

PREPARED STATEMENT OF HON. ED WHITFIELD

This morning's hearing will begin our discussion of the Ratepayer Protection Act, a draft bill that would add several commonsense safeguards to EPA's proposed 111(d) rule for existing power plants, which is referred to by the agency as the Clean Power Plan. I welcome Acting Assistant Administrator McCabe as well as a diverse group representing those impacted by the proposed rule.

At our hearing on the Clean Power Plan last month, we learned about the legal concerns with this unprecedented attempt to expand EPA's Clean Air Act authority over the highly complex U.S. electricity sector. We also heard from State officials about the substantial challenges they would face in developing State plans and seeking to bring their electricity systems into compliance with this highly complicated and expensive proposal. As a result of that hearing, I am convinced that this proposed rule is on very shaky legal ground and may end up being remanded or even vacated by the Federal courts. And in addition to the legal issues, I am also concerned that implementation of this rule risks serious economic harm that States would be prohibited from addressing. The Ratepayer Protection Act provides solutions to both these legal and implementation problems.

The legal infirmities in this rule have already sparked litigation from States and other parties, and additional lawsuits are sure to follow. However, the proposed rule's tight deadlines would force many States to initiate costly and potentially irreversible compliance steps before these legal challenges are concluded. For example, in developing State plans, decisions may have to be made to shut down coal-fired power plants, begin the process for constructing new energy facilities and transmission, change how electricity is dispatched within their State and establish expensive new energy efficiency programs, all before we know whether this regulation is legal.

The Ratepayer Protection Act ensures that Federal environmental regulators do not get ahead of the law and impose burdens on States that may later prove to be outside their legal authority. It does this simply by suspending EPA's highly accelerated compliance requirements until judicial review is completed.

Aside from the legal issues, the proposed rule also raises serious implementation concerns. In prior hearings relating to EPA's 111(d) rule, numerous State officials have raised concerns about the costly compliance challenges for their electricity systems. A NERA study estimates electric rate increases averaging 12 percent or more nationwide, and considerably higher in some States. Indeed, the Chairman of the Florida Public Service Commission testified that electric rate hikes could reach 25 to 50 percent in his State.

Ratepayers ranging from homeowners to small business owners to major manufacturers will be impacted by the Clean Power Plan. Higher electric bills pose a burden on consumers, and disproportionately so for low-income households and those on fixed incomes. And every additional dollar a business has to spend on electricity is money that can't be spent for new hiring. In some cases, higher electricity costs

could spell the difference between staying in business and having to shut down, especially in a globally competitive economy where countries like China can still rely heavily on coal to power their factories affordably.

At today's hearing, we will get a better sense of the Clean Power Plan from the perspectives of those who will have to pay for it. As we hear these concerns, we need to be mindful that, despite EPA's insistence that its proposed rule gives States considerable flexibility, in reality there is little recourse should compliance prove costlier than anticipated by the agency. The Ratepayer Protection Act ensures that if the Governor of a State finds that a specific State or Federal plan will cause significant adverse effects on ratepayers, the State will not have to comply. It also has a similar provision if a Governor finds a significant adverse impact on electric reliability. In making these determinations, Governors are required to consult the State energy, environmental, health, economic development, and electric reliability officials.

Keep in mind this bill does not repeal the Clean Power Plan, nor does it in any way stop States that choose to go along with EPA's regulatory agenda from doing so. It simply protects ratepayers from measures that may prove to be illegal or excessively expensive, and restores a measure of State control over electricity decision-making.

[The text of H.R. ———, the Ratepayer Protection Act, appears at the conclusion of the hearing.]

Mr. WHITFIELD. At this time, I would like to recognize the distinguished gentleman from Illinois, Mr. Rush, for his opening statement.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. Well, thank you, Mr. Chairman. And I also want to extend my compliments to Acting Assistant Administrator, Ms. McCabe. I want to welcome your appearance at this committee—subcommittee hearing.

Mr. Chairman, I want to also thank you for holding this hearing today on what you have called the Ratepayer Protection Act for 2015. Mr. Chairman, a more appropriate and fitting title for this legislation before us would be the Just Say No to the Clean Power Plan Act, which is a fitting description of what this legislation attempts to do. The bill seeks to delay and ultimately get rid of the Clean Power Plan by extending all compliance deadlines to all legal challenges decided by the court. Here we go again.

Under this legislation, the time period for all Clean Power Plan compliance and submission deadlines would be extended until 60 days after the final rule appears in the Federal Register, and only after, and I quote, "judgment becomes final and no longer subject to further appeal or review." When is that supposed to happen, Mr. Chairman? That is the question. Again, to delay is to deny, and this certainly is the Just Say No bill. Just Say No to the Clean Power Plan Act.

Mr. Chairman, at first glance, the purpose of this bill's language may seem innocuous. In effect, what this bill will actually do is unnecessarily stall and delay implementation of the Clean Power Plan, and also it will spur countless and, in most cases, frivolous and meritless challenges to the plan in order to extend the ultimate compliance time. Just say no. To delay is to deny.

Another problem with this legislation is that it will effectively give Governors veto power over the Federal requirements of the Clean Power Plan if they decide that their States don't want to do this, don't want to cooperate, don't want to comply with the plan,

and the plan would have an adverse effect on even the State's rate-payers or the reliability of its electricity system. Unfortunately, Mr. Chairman, allowing Governors to join in this attempt to just say no to the Clean Power Plan will fly in the face of decades of the Clean Air Act's use of cooperative federalism which has been so successful in moving our Nation forward, and protecting our air and protecting our environment. Additionally, Mr. Chairman, there is no need to provide a safe harbor for States who cannot or will not form plans to bring their States into compliance with the Clean Power Plan, as this bill attempts to do because already under current law, the EPA sets the emission reduction goals under Section 111(d), and it is up to the States themselves to decide how to best achieve these reductions. However, Section 111(d) states that if States refuse to present a plan that will reduce carbon emissions from existing power plants, then the EPA will step in with a Federal 111(d) plan to ensure that these environmental risks are addressed to the benefit of this Nation as a whole.

Mr. Chairman, it would indeed set a dangerous precedent to most Clean Air Act and to the overall public health if Congress were to enact a law that would allow 50 Governors to simply veto Federal environmental policy that they did not like or that they do not agree with. The Clean Air Act use of cooperative federalism has been a cornerstone in moving our Nation forward in its environmental protection policy, and this bill has the potential to be star potential to undo decades worth of progress that we have seen and witnessed in this area. The provisions in this bill will make it too easy for a Governor to just say no to reducing harmful emissions from power plants, the number one emitters of carbon dioxide, if they found that these regulations would be too burdensome to enact.

Mr. Chairman, I think we should think long and hard, consider what we are doing before we go down this slippery slope to give individual States the power to turn back the clocks to the dark days on what we have been so very successful so far in terms of our environmental protection policy.

Mr. Chairman, this is a bill that, frankly, doesn't really deserve our time, because this bill is so inappropriate on its face.

Thank you, and I yield back the balance of my time.

Mr. WHITFIELD. Gentleman doesn't have any time, but thank you for your comments.

And at this time, I would like to recognize the chairman of the full committee, Mr. Upton, for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman. I want to thank the witnesses, and appreciate their input regarding the administration's controversial Clean Power Plan. No less an expert than Laurence Tribe has testified that this proposed rule exceeds EPA's statutory authority, and raises numerous constitutional issues. In addition, more than half the States have questioned the legality and feasibility of EPA's attempt to micromanage each State's electricity generation, transmission, distribution, and use. So if you think of the

Clean Power Plan as the Obamacare approach applied to State electricity systems, you would not be very far off the track.

Like the health law, the costs of the Clean Power Plan ultimately fall on consumers and job creators who are certain to see their electric bills go up, and for many States the rate increases will be, indeed, significant.

As highlighted in Mr. Trisko's testimony, Michigan residents can expect rate increases up to 15 percent. This would come at the worst possible time as folks are starting to get back on their feet. Rate hikes will impose unwelcome hardships on family budgets, inflict damages to businesses both large and small, hamper job growth, and impact certainly the most vulnerable.

The Ratepayer Protection Act's reasonable and targeted provisions will greatly reduce the major risks to ratepayers from the administration's plan. First, the bill extends the compliance deadlines until after judicial review is completed. Given that so many States have raised serious concerns about the legality of EPA's proposed rule and a dozen have already sued, it makes sense to clear things up legally before the rule's costly and complex requirements take effect.

The Ratepayer Protection Act also provides each State Governor with the authority to protect its ratepayers to the extent a State or Federal plan under the rule would have a significant adverse effect by contributing to higher electricity costs or threatening reliability. States, not the EPA, should have the last word with respect to the affordability and reliability of their electricity systems. On the other hand, those State Governors who are supportive of EPA's proposed rulemaking and anticipate no problems with it are free to comply with the agency's demands. Go right ahead.

In northern States like Michigan, affordable and reliable electricity is absolutely essential to making it through the winter months. And America's manufacturing sector could not survive without electricity rates that allow it to be globally competitive. In fact, the National Association of Manufacturers has warned that higher costs as a result of the Clean Power Plan and other recent EPA rules could place domestic manufacturers at a global disadvantage. That is real. The commonsense protections in the Ratepayer Protection Act are critical to preserving both our standard of living and our economic future. In making these decisions, Governors must consult with their State's energy, economic, health, and environmental authorities. States can and should be a necessary check on EPA's otherwise one-sided authority to change a State's electricity system, and to do so without regard to the consequences.

This bill, the Ratepayer Protection Act, is a sensible approach to addressing the very serious problems with the administration's plan. Washington certainly does not always know best, and I would urge my colleagues to join the effort on behalf of jobs and affordable energy.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

I thank the witnesses and appreciate their input regarding the administration's controversial Clean Power Plan. No less an expert than Laurence Tribe has testified

that this proposed rule exceeds EPA's statutory authority and raises numerous Constitutional issues. In addition, more than half the States have questioned the legality and feasibility of EPA's attempt to micromanage each State's electricity generation, transmission, distribution, and use. If you think of the Clean Power Plan as the Obamacare approach applied to State electricity systems, you would not be very far off the mark.

Like the health law, the costs of the Clean Power Plan ultimately fall on consumers and job creators who are certain to see their electric bills go up, and for many States the rate increases will be very significant. As highlighted in Mr. Trisko's testimony, Michigan residents can expect rate increases up to 15 percent. This would come at the worst possible time as folks are starting to get back on their feet—rate hikes will impose unwelcome hardships on family budgets, inflict damage to businesses both large and small, and hamper job growth.

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In making these decisions, Governors must consult with their State's energy, economic, health, and environmental authorities. States can and should be a necessary check on EPA's otherwise one-sided authority to change a State's electricity system and do so without regard to the consequences.

The Ratepayer Protection Act is a sensible approach to addressing the very serious problems with the administration's plan. Washington does not always know best, and I urge all of my colleagues to join this effort on behalf of jobs and affordable energy.

Mr. UPTON. And I yield back the balance of my time.

Mr. WHITFIELD. Gentleman yields back.

At this time, I would like to recognize the gentleman from New Jersey, the ranking member of the full committee, Mr. Pallone, for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. Today's hearing on a bill to gut the President's Clean Power Plan is misguided and unfortunate. I do not support this legislation, and urge members to closely examine its harmful effects on our country's progress to combat damaging pollution and catastrophic climate change.

First, let me thank the Assistant Administrator McCabe for being here today. I understand that EPA received over 4 million comments on the proposed Clean Power Plan, and that you, Administrator McCarthy and the agency's staff are working day and night to review and consider those comments.

EPA did an unprecedented amount of outreach to States, industry, and stakeholders when developing the proposal, and the agency has continued its outreach. This includes an ongoing series of listening sessions with the Federal Energy Regulatory Commission, and EPA is also actively working with the States, grid operators, public utility commissions and electricity suppliers of all kinds to finalize a rule that works for everyone, especially ratepayers.

Like all proposed rules, the agency is considering the justness of the Clean Power Plan based on comments and stakeholder feedback. For example, the draft bill's implementation timeline won't begin until 2020, but because of feedback EPA is considering modifications to allow additional flexibility to States to help address questions of timing, reliability, and other implementation issues. And for that reason, I believe the Clean Power Plan is amenable, reasonable and achievable, and EPA is clearly committed to an open dialogue to ensure its success.

Meanwhile, the bill before us seeks to undermine all that work. Under the current Clean Air Act and the proposed Clean Power Plan, no State has to submit a State plan, so giving Governors the option to opt out of developing a State plan doesn't change anything. However, and this is important, this bill would give Governors the option to opt out of a Federal plan which EPA must implement if a State fails to act. In that respect, we should view this bill for what it really is; an amendment to the Clean Air Act, which would overturn the principle of cooperative federalism that has been in place for more than 40 years. This cooperation is essential to ensure all Americans are protected from environmental harm, even if the actions of their home State fall short. Under this bill, large sources of carbon pollution could be exempt from any meaningful restrictions and, therefore, bad States get a free ride to pollute without any consequences, while every other State foots the bill.

Finally, this bill would automatically delay implementation of the Clean Power Plan by extending all deadlines by the amount of time it takes litigation to conclude. That blanket extension would be given to all polluters regardless of whether their legal arguments turn out to have any merit.

As we heard at our last hearing, EPA does, in fact, have authority for the Clean Power Plan that will ultimately be upheld by the courts, but this bill would provide an incentive for polluters to run the clock on litigation so all deadlines will be extended as long as possible, no matter how frivolous the challenge and regardless of the outcome. And this is an incredibly reckless and dangerous precedent to set with regard to any law, in my opinion.

I think the Republicans refuse to accept the fact that climate change is real, and that Congress should be taking action to address it. The effort by Republicans on this committee to push States to say no and refuse to cooperate with EPA is reckless and dangerous. The New York Times referred to it as, and I quote, "a travesty of responsible leadership." Meanwhile, former Bush EPA Administrator and New Jersey Republican—and I stress Republican—Governor Christine Todd Whitman characterized this effort as having both the possibility to undermine our Nation's entire rule of law.

States should begin the careful process of moving to cleaner, cheaper, and more reliable electric power systems. The Clean Power Plan is a modest and flexible proposal. If my Republican colleagues have a better idea for protecting against the changing climate then please speak up. Just saying no and condemning future generations is not an option.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Mr. Chairman, today's hearing on a bill to gut the President's Clean Power Plan is misguided and unfortunate. I do not support this legislation and urge Members to closely examine its harmful effects on our country's progress to combat damaging pollution and catastrophic climate change.

First, let me thank Assistant Administrator McCabe for being here today. I understand that EPA received over four million comments on the proposed Clean Power Plan, and that you, Administrator McCarthy and the Agency staff are working day and night to review and consider those comments.

EPA did an unprecedented amount of outreach to States, industry, and stakeholders when developing the proposal. And the Agency has continued its outreach. This includes an ongoing series of listening sessions with the Federal Energy Regulatory Commission. EPA is also actively working with States, grid operators, public utility commissions and electricity suppliers of all kinds to finalize a rule that works for everyone, especially ratepayers.

Like all proposed rules, the Agency is considering adjustments to the Clean Power Plan based on comments and stakeholder feedback. For example, the draft rule's implementation timeline won't begin until 2020, but because of feedback, EPA is considering modifications to allow additional flexibility for States to help address questions of timing, reliability and other implementation issues. And for that reason I believe the Clean Power Plan is eminently reasonable and achievable. EPA is clearly committed to an open dialogue to ensure its success.

Meanwhile, the bill before us seeks to undermine all of that work. Under the current Clean Air Act and the proposed Clean Power Plan, no State is required to submit a State plan. So giving Governors the option to opt out of developing a State plan doesn't change anything. However—and this is important—this bill would give Governors the option to opt out of a Federal plan, which EPA must implement if a State fails to act.

In that respect we should view this bill for what it really is, an amendment to the Clean Air Act, which would overturn the principle of cooperative federalism that has been in place for more than 40 years. This cooperation is essential to ensure all Americans are protected from environmental harm, even if the actions of their home State fall short. Under this bill, large sources of carbon pollution could be exempt from any meaningful restrictions. Therefore, scofflaw States get a free ride to pollute without any consequences while every other State foots the bill.

Finally, this bill would automatically delay implementation of the Clean Power Plan by extending all deadlines by the amount of time it takes litigation to conclude. That blanket extension would be given to all polluters regardless of whether their legal arguments turn out to have any merit.

As we heard at our last hearing, EPA does, in fact, have authority for the Clean Power Plan and I believe it will ultimately be upheld by the Courts. But this bill would provide an incentive for polluters to "run the clock" on litigation so all deadlines in the rule would be extended as long as possible, no matter how frivolous the challenge and regardless of the outcome. This is an incredibly reckless and dangerous precedent to set with regard to any law.

Climate change is real and Congress should be taking action to address it. The effort by Republicans on this committee to push States to "say no" and refuse to cooperate with EPA is both reckless and dangerous. The New York Times referred to it as "a travesty of responsible leadership." Meanwhile, former Bush EPA Administrator and New Jersey Republican Governor Christine Todd Whitman characterized this effort as having "the possibility to undermine our Nation's entire rule of law."

States should begin the careful process of moving to cleaner, cheaper, and more reliable electric power systems. The Clean Power Plan is a modest and flexible proposal. If my Republican colleagues have a better idea for protecting against a changing climate, then please speak up. Just saying no and condemning future generations is not an option. Thank you.

Mr. PALLONE. And I don't know if anybody else wanted to have a minute left on our side. If not, Mr. Chairman, I yield back.

Mr. WHITFIELD. Gentleman yields back, and that concludes the opening statements.

So at this time, I would like to formally introduce Ms. Janet McCabe, who is the Acting Assistant Administrator for the Office of Air and Radiation at the EPA. And once again, welcome, Ms. McCabe. And I would like to recognize you for 5 minutes for your statement.

STATEMENT OF THE HONORABLE JANET MCCABE, ACTING ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Ms. MCCABE. Thank you, Chairman Whitfield, Ranking Member Rush, and members of the subcommittee. I appreciate the opportunity to testify before you today on EPA's proposed 111(d) rule for existing power plants, also known as the Clean Power Plan, and the discussion draft of the Ratepayer Protection Act of 2015.

The discussion draft and EPA's proposed carbon pollution plan reflect a shared concern: maintaining the reliability of the electricity grid. Clean Air Act regulations have not caused the lights to go out in the past, and the proposed Clean Power Plan will not cause them to go out in the future.

This morning, I will talk about EPA's proposal and how the final rule will address many of our shared concerns, and my written testimony provides additional feedback regarding the discussion draft.

To summarize, EPA views the draft as premature, because EPA has not yet finalized the Clean Power Plan; unnecessary, because EPA has the tools and, indeed, the obligation to address cost and reliability issues in our final rule; and ultimately harmful, because the bill, if enacted, would delay or prevent the climate and air quality benefits of the Clean Power Plan.

This summer, EPA will be finalizing a flexible, commonsense program to reduce carbon pollution from the power sector; the largest stationary source of CO₂ emissions in the country, while continuing to ensure that all Americans have access to affordable, reliable energy, and a clean and healthy environment. However, EPA's long history developing Clean Air Act pollution standards for the electric power sector, including the proposed Clean Power Plan, the agency has consistently treated electricity system reliability as absolutely essential. We have devoted significant attention to this issue ourselves, and have also made sure that we were working with stakeholders and energy regulators at the Federal, State and regional levels to ensure that the important public health and environmental protections Congress has called for are achieved without interfering with the country's reliable and affordable supply of electricity.

In crafting the Clean Power Plan proposal, EPA sought to provide a range of flexibilities and a timeline for States, tribes and territories, and affected generators that would reduce carbon emissions while maintaining affordable electric power and safeguarding system reliability. EPA's proposed plan gives States the opportunity to choose and allows electric generators to choose from a wide variety of approaches to cutting emissions, and is intended to

provide States, generators, and other entities charged with ensuring electric reliability with the time they need to plan for and address any reliability issues they believe may arise. This same wide range of approaches also provides States and utilities with the latitude they need to minimize cost.

Thanks to both our extended engagement process and the many substantive comments we received, we know that many States and power companies are urging us to consider changes in order to ensure that the final rule delivers on the significant flexibilities we intend to create to protect the system's reliability and affordability. This public process has provided a tremendous amount of information and ideas, and I assure you the EPA is taking all of that information and those suggestions, the comments I have provided very seriously, and we expect to make changes to the proposal to address many of the suggestions and concerns we have received. Ideas offered by stakeholders range from ensuring that initial compliance expectations and compliance flexibilities provide the States the latitude they need to establish workable glide paths that do not put reliability at risk, to addressing concerns regarding stranded assets, to facilitating workable, regional approaches that are not too formal or too complicated to implement easily, and to crafting what many are calling a reliability safety valve as a backstop in case a reliability issue does arise.

EPA has taken unprecedented steps to reach out to and engage with all of the States and our stakeholders. One of the key inputs EPA heard before proposal and during the comment period is the need to design the rule in a way that respects both the urgency of dealing with climate change, and the time it takes to plan and invest in the electricity sector in ways that ensure both reliability and affordability going forward. We have paid close attention to those comments, and will finalize a rule that takes them all into account.

I look forward to your questions, Mr. Chairman. Thank you very much.

[The prepared statement of Ms. McCabe follows:]

**Opening Statement of Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency**

Legislative Hearing on the Ratepayer Protection Act of 2015

**Energy and Commerce, Energy and Power Subcommittee
United States House of Representatives
April 14, 2015**

Chairman Whitfield, Ranking Member Rush, members of the subcommittee, I appreciate the opportunity to testify before you today on the discussion draft of the "Ratepayer Protection Act of 2015." Although the Administration does not have an official position on the discussion draft, I would like to make several basic points that I hope will assist the committee in its consideration of a draft bill that EPA views as premature, unnecessary and ultimately harmful.

The science of climate change is clear. The risks of climate change are clear. And the high costs to American families of inaction are clear. That's why in 2013 President Obama laid out a Climate Action Plan directing agencies to undertake actions to reduce emissions of CO₂ in the US, help prepare communities across the country to adapt to the changes being caused by

climate change, and show leadership abroad in what must be a global effort. A key element of the Plan is the flexible, common-sense program EPA will be finalizing this summer to cut carbon pollution from the power sector – the largest stationary source of CO₂ emissions in the country – while continuing to ensure that all Americans have access to affordable, reliable energy and a clean and healthy environment.

Over EPA's long history developing Clean Air Act pollution standards for the electric power sector, including the proposed Clean Power Plan, the agency has consistently treated electric system reliability as absolutely essential. We have devoted significant attention to this issue ourselves and have also made sure that we were working with stakeholders and energy regulators at the federal, state, and regional levels to ensure that the important public health and environmental protections Congress has called for are achieved without interfering with the country's reliable and affordable supply of electricity. Because of this attention, at no time in the more than 40 years that EPA has been implementing the Clean Air Act has compliance with air pollution standards resulted in reliability problems.

In crafting the Clean Power Plan proposal, EPA sought to provide a range of flexibilities and a timeline for states, tribes, territories, and affected generators that would cut carbon emissions while maintaining affordable electric power and safeguarding system reliability. EPA's proposed plan gives states the opportunity to choose – and allow electric generators to choose – from a wide variety of approaches to cutting emissions, and is intended to provide states, generators, and other entities charged with ensuring electric reliability with the time they need to plan for and address any reliability issues that they believe may arise. This same wide range of approaches also provides states and utilities with the latitude they need to minimize costs.

EPA's proposal maximizes flexibility for the states in a number of ways – all of which are instrumental to safeguarding reliability and protecting ratepayers.

First, the proposal allows states and generators to choose the types of emission reduction measures that make the most sense for them, so that they can devise a carefully tailored plan to meet carbon pollution goals without risk to an affordable and reliable electric power system.

Second, the proposed final compliance date of 2030 gives states, generators, reliability entities, and other stakeholders a 15-year planning horizon – time for planning, coordination, and infrastructure development. Meanwhile, the interim compliance period of 2020 to 2029 was intended to allow states and affected generators to shape their own glide paths so that they can determine the pace and timing of the measures and programs that need to be put in place.

Finally, under the proposal states may act together through regional or multi-state plans, an option that can further reduce costs. We believe that this option allows states to develop strategies that are more in line with existing interstate power markets, taking maximum advantage of the sector's interconnected nature to maintain reliability and affordability while achieving emission reductions.

Thanks to both our extended engagement process and the many substantive comments we received, we know that many states and power companies are urging us to consider changes in order to ensure that the final rule delivers on the significant flexibilities we intend to create to protect system reliability and affordability.

This public process has provided a tremendous amount of information and ideas and I assure you that EPA is taking the information and suggestions commenters have provided very seriously and we expect to make changes to the proposal to address many of the suggestions and concerns we have received.

Ideas offered by stakeholders range from ensuring that initial compliance expectations and compliance flexibilities provide states the latitude they need to establish workable glide paths that do not put reliability at risk, to addressing concerns regarding stranded assets, to facilitating workable regional approaches that are not too formal or complicated to easily implement, to crafting what many are calling a reliability safety valve as a backstop in case a reliability issue does arise.

Turning to the discussion draft, as I noted at the beginning, EPA views the draft as premature, unnecessary and ultimately harmful.

It is premature because the rule has not been finalized yet. As I mentioned, we are looking closely at the input we received, and will be making adjustments to the rule to address many of the concerns that have been raised. It is unnecessary because, as

this testimony – as well as the proposal itself – explain, EPA has the tools as well as the obligation to address issues related both to cost and to reliability and we have made clear our commitment to do just that when we issue the final rule this summer.

And, finally, the bill, if enacted, would do real damage by delaying or preventing the climate and air quality benefits that will be achieved through the timely implementation of this lawful Clean Air Act program. The proposal we issued in June of last year rested on a firm legal foundation. The comments we received during the comment period that ended on December 1, 2014, included extensive discussion of a range of legal issues. The final rule will account for and address those issues fully, and, as a result, the final rule will rest on an even stronger legal foundation. I would not recommend, and I am confident that the Administrator would not sign, a final rule that the EPA did not believe was on firm legal footing and worthy of being upheld by the federal courts. In light of that, the effect of the draft bill would be a wholly unnecessary postponement of reductions of harmful air pollution.

Although members of Congress have routinely expressed concern with EPA's rules and their legality over the years, we are not aware of any instance in the last 25 years when Congress has

enacted legislation to stay implementation of an air rule during judicial review. To do so here, before the rule is even final, would be an unprecedented interference with the EPA's efforts to fulfill its duties under the Clean Air Act—an Act that was written and passed by Congress with bipartisan support and that has brought improved public health to millions of Americans for decades.

And, of course, as the subcommittee well knows, once the final rule is issued and they have a meaningful record to review, the courts will more than likely be given the opportunity by petitioners for judicial review to address arguments and considerations for staying the rule's compliance date even without legislation such as this draft bill.

EPA has taken unprecedented steps to reach out to, and engage with, all of the states and our stakeholders. One of the key inputs EPA heard – before proposal and during the comment period – is the need to design the rule in a way that respects both the urgency of dealing with climate change as well as the time it takes to plan and invest in the electricity sector in ways that ensure both reliability and affordability. We have paid close attention to those comments and will finalize a rule that takes them all into account.

I look forward to your questions. Thank you.

Mr. WHITFIELD. Well, thank you very much, and we appreciate that statement.

And at this time, I would like to recognize myself for 5 minutes of questions.

Ms. McCABE, I think even you would agree that this is a bold move on the EPA's part, but we all understand 111(d) and the controversy surrounding it in that such a ubiquitous substance as CO₂, you all never tried to regulate anything like that under 111(d) before. And I will tell you, as I said in my statement, half of State regulators have been in touch with us, and they are very much concerned. And you know that lawsuits have been filed, so I think you would acknowledge that this is a very bold move on EPA's part. And one of the things that I am concerned about, and I would like to make very clear, I am certainly not an expert in the Clean Air Act but I have read more than I want to, to be truthful about it, but there is a definition in the Clean Air Act about the source, and I don't think that a State has ever been considered a source before. And every time I hear Ms. McCarthy or anyone from the EPA or from the administration talk about this rule, they go to great lengths talking about all the flexibility they are giving to the States, but the States have no flexibility in determining what the cap will be on the CO₂ emission. Isn't that correct? Do they have any option on what the cap will be?

Ms. MCCABE. EPA will set the target.

Mr. WHITFIELD. Yes, EPA sets the target.

Ms. MCCABE. Um-hum.

Mr. WHITFIELD. And how did EPA set the target for each State?

Ms. MCCABE. We looked at a wealth of data about power generation across the country, looking at the kinds of technologies that are already in use to—

Mr. WHITFIELD. And how did you decide what the number would be for each State?

Ms. MCCABE. We looked at four particular types of approaches that are widely in use across the country, and we applied those in a uniform manner to each State's power inventory.

Mr. WHITFIELD. And did you assume that every coal plant, for example, would be able to become more efficient?

Ms. MCCABE. We used information from across the country to apply an average expectation about efficiency improvement.

Mr. WHITFIELD. And what is that average expectation?

Ms. MCCABE. In the proposal, we assumed a 6 percent efficiency—

Mr. WHITFIELD. And you know what, we are hearing from everyone that, many of these coal plants, there is no way they can get a 6 percent more efficient rating. So—and people are questioning that—this assumption, how you came up with this 6 percent assumption. But let me just ask you, this legislation has been characterized as unreasonable. When you consider the unique and radical approach that is being utilized with this rule, why would anyone object when we already know many lawsuits have already been filed, once that rule becomes final, there are going to be more lawsuits filed, why would anyone, when it has already been said that this is not going to significantly affect the climate anyway, why would anyone object to giving States an opportunity to do their

State implementation plan after the judicial remedies have been exhausted?

Ms. MCCABE. Well, I have a couple of responses to that, Mr. Chairman, and I—you won't be surprised to hear that I don't exactly agree with some of the words that you have used to characterize the plan. It is not radical. It follows the process laid out at—

Mr. WHITFIELD. Has 111(d) ever been used in this way before?

Ms. MCCABE. 111(d) has been used to establish expectations that States—

Mr. WHITFIELD. But you have only utilized it four or five times in the history of the Clean Air Act. It has always been very focused, small type of arrangements. But anyway, why would you object to giving States an opportunity to exhaust legal remedies before they have to give a State implementation plan?

Ms. MCCABE. Well, there is a system in place for legal concerns, if there are any, about a rule that EPA adopts under the Clean Air Act to test out those legal concerns, and that is the—

Mr. WHITFIELD. Well, OK, but why would you object? I mean why do you object to giving States this additional time?

Ms. MCCABE. The discussion draft basically allows an unlimited time, this could lead to an unlimited delay in the amount of time that would go by before steps would be taken to implement—

Mr. WHITFIELD. But we—you know, we have been told that normally—that it is not unusual for States to be given 3 years for implementation plans, but in this instance they are getting like 13 months or even less.

Ms. MCCABE. No, that is not correct, Mr. Chairman. The implementation period for this rule goes out to 2030.

Mr. WHITFIELD. I am not talking about implementation, I am talking about the plan, submitting the plan.

Ms. MCCABE. Well, that is right. The—

Mr. WHITFIELD. And that is a major chore.

My time has expired. At this time, I am going to recognize the gentleman from Illinois, Mr. Rush.

Mr. RUSH. I want to thank you, Mr. Chairman, again. And, Madam Administrator, one of the foremost beneficiaries of the CPP is low-income communities, and I have a special and particular interest in the low-income communities. And are you aware of the NRDC report that just came out?

Ms. MCCABE. Yes, I am.

Mr. RUSH. That report stated that low-income Americans, again, would benefit most from CPP. Do you have any commentary on that, and what are your thoughts about that?

Ms. MCCABE. Well, we know that the impacts of climate change that we are already experiencing in the country, and that we can expect to experience more, can have an especially impactful effect on low-income communities who are already at a disadvantage when it comes to the impacts of pollution. We expect and we are seeing that climate change will lead to more heat waves, more air pollution, which will exacerbate asthma, low-income communities often have higher rates of asthma, disruption such as from the increased intensity of intense storm events that can have an adverse impact on low-income communities that are not in a position to re-

cover as easily as others with more means. So we definitely see that low-income communities are more at risk of the adverse impacts that we see on public health, welfare, and economic wellbeing and will benefit significantly from steps that we can take here.

Mr. RUSH. And do you agree that States have a responsibility to promote the general health and welfare of low-income communities and low-income individuals, that there is a way for the States to both invest in cleaner, more efficient community provisions, such as the CPP, and also provide help to those most vulnerable communities through direct bill assistance?

Ms. MCCABE. Well, the Clean Power Plan, and our proposal, would allow States all the latitude they need to design a plan that meets the needs of all the communities in their State and provide protections to low-income communities to make sure that the benefits of the program are realized for all citizens across the State.

Mr. RUSH. Madam Assistant Secretary, if this bill passes and becomes—well, the bill under consideration, what will be the result in your estimation, what will be the outcomes, what kind of impact would this bill have on the EPA's stated role that—of protecting our environment? What will be the—

Ms. MCCABE. Well, it would clearly delay the reductions that are to be achieved through this program, and that so many people see as necessary. In fact, many, many Americans see as necessary and are asking EPA to take action. It would create additional uncertainty, and one of the things that we always hear from the power sector is that certainty is one of the most important things for them to be able to plan how they are going to manage their resources in the future, knowing that carbon reduction is on the way. And so they want to know and get on with it. And the bill also would create an opportunity, as you have identified, for Governors to basically opt out of the program, which is completely inconsistent with the way Congress set up the Clean Air Act, which is that the Federal Government sets the expectations for what a clean and healthy environment should be across the country, and then States use their flexibilities to achieve those goals in the way that works best for them.

Mr. RUSH. And would you agree that if this bill passes, then the Congress would be playing a sort of environmental Russian roulette in the health and welfare of our Nation and its citizens, particularly as it relates to the environment?

Ms. MCCABE. Well, it would be a concern for there to be a delay in a reasonable and commonsense program to make these reductions.

Mr. RUSH. Right. One State might get it right, one State might get it wrong, the next State might get it in between, so we are playing some kind of a hide-and-seek game with our citizens and the environment. Would you agree with that?

Ms. MCCABE. I think you have raised real concerns.

Mr. RUSH. Thank you. Mr. Chairman, I yield back.

Mr. WHITFIELD. Gentleman yields back.

At this time recognize the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. I thank the Chair. And good morning, Administrator McCabe.

Ms. MCCABE. Good morning.

Mr. OLSON. I would like to start by reading a couple of quotes from the Public Utility Commission back home. It is called the PUC, and they have one of the largest States in America. Texas has almost 10 percent of this country's population, and we have an enormous proportion of America's energy production in its busiest port in Houston. And these quotes aren't from a coal lobbyist. They are from a commission that helps keep the lights on and keeps rates fair. I quote, "Rule 111(d) will create significant electrical reliability problems in Texas." Another quote, "The carbon emission limits for Texas will result in significantly increased costs for Texas electricity consumers." The final quote, it will cost—"Increase in energy costs for consumers, up to 20 percent in 2020." That does not include new transmission lines, new power plants. The cost will hit—this is their quote, "\$10 to \$15 billion in annual compliance costs by 2030." I know you think this rule has plenty of flexibility. Others disagree.

Recently, FERC Commissioner Moeller has said that the rule will mean havoc on the grid if there isn't a reliability safety valve. The operators want an automatic way to react if reliability is threatened, too. My question is can you commit right here to put a relief mechanism to protect reliability or even affordability in the final rule? If no, why not? What is the harm?

Ms. MCCABE. Well, you have raised concerns that, as I mentioned in my testimony, we have as well, and we always do. We have received many, many comments from across the country, including your State of Texas, raising these issues with a lot of good ideas. And as Administrator McCarthy and I have said on many occasions, we do expect to make some changes in the rule that will address a lot of these concerns, including considering a variety of ideas that people have suggested to us for things like a reliability safety valve. So I think when the final rule comes out, you will see that we have been very responsive to these concerns.

Mr. OLSON. But a safety valve, yes or no? Yes or no?

Ms. MCCABE. You know, the Administrator signs the final rule so I can't commit here, but I will tell you that these are the kinds of things that we are looking at very, very, very closely.

Mr. OLSON. So looks like a sort of sideways, not yes or no.

Next question is about small power systems. There are dozens of power systems, utilities across the State of Texas run by municipal cities. We have them all across America actually. These communities have come together to build one or two efficient little power plants to keep the lights on. For example, back home in Texas, the Texas Municipal Power Authority has one small coal-fired plant that supplies power for four cities, Denton, Bryant, Garland, and Greenville, northcentral Texas. They don't have back-up gas plants to take up the slack, or inefficiencies to fix. They told the EPA recently that their best bet to comply might be just to shut power plants down, just close it down. They rely on this power for affordable power. The impact to the economy will be severe. There are straight investments made to power directly to these towns. Won't your rule have an impact on small, self-reliant communities like Denton, Bryant, Garland, Greenville, all across America? Will it hurt these communities, ma'am?

Ms. MCCABE. Congressman, we have spent a lot of time with the small municipal providers and rural electrics, and we have heard their concerns. I think comments like that though don't take into account the flexibility that the States will have to design plans that address concerns like that. There is nothing in the rule that requires any single plant to do any particular thing, and there are lots of opportunities for the State of Texas and every State across the country to design a plan that makes sure that they are paying attention to the particular needs of the particular types of power providers in their State.

Mr. OLSON. But if they review the rules and they say the best bet maybe just to close down. I mean that is a real problem, ma'am. Have you considered they will just close down because of these new rules? It is part of the equation going forward. What are you going to do to fix this problem?

Ms. MCCABE. The decision to close a plant is made on the basis of a lot of considerations that go way beyond environmental regulation, but what I am saying is that the plan does not put any State in the position of having to make that particular choice on behalf of a particular company. There are options that they can build into their plan to avoid those situations if that is in the best interest of those companies and the customers that they serve.

Mr. OLSON. Well, the folks back home disagree.

I yield back the balance of my time.

Mr. WHITFIELD. At this time I will recognize the gentlelady from California, Mrs. Capps, for 5 minutes.

Mrs. CAPPS. Thank you, Mr. Chairman, for holding this hearing, and I thank Ms. McCabe for your testimony.

And as we know, the science is clear that increased concentrations of carbon dioxide and other greenhouse gases are causing our planet's climate to change. Climate change affects our daily lives by increasing health risks, making our oceans more acidic, threatening food and water supplies, exacerbating drought, among many other impacts, and these impacts are predicted to only intensify in the future, negatively impacting our children and grandchildren. And that is why we all have a responsibility to act now to reduce the carbon emissions and other greenhouse gases that are driving climate change.

As you know, power generation was responsible for nearly 40 percent of the carbon dioxide emitted last year in the United States. Of this, 76 percent was from the coal-powered sector. The simple truth is that we cannot address climate change without reducing these emissions. That is what EPA is doing with the Clean Power Plan. The plan is strong yet flexible, allowing each State to determine the best ways to achieve its carbon dioxide targets. And EPA is in the process of reviewing public comments to ensure that the Clean Power Plan will meet its goal, minimize cost and reliability concerns, and maximize benefits to human health and the environment.

Ms. McCabe, can you elaborate on the flexibility that States have, and just tell us what that—some examples or what that means the States have in meeting the carbon reduction targets, and the process EPA has used to develop this kind of plan.

Ms. MCCABE. I would be happy to, Congresswoman. So there are a number of ways we built flexibility into the plan. First of all, as I have said already, there is no prescribed approach or control technology that States or companies have to use that we identified for, but there are many other ways that companies can go about reducing carbon including really positive community building things like investigate renewable energy and energy efficiency.

Another flexibility in the plan is the length of the time to implement it. So all the way until 2030, States and utilities would have to plan. So that builds in a lot of flexibility right there. Now, this is also not a rule—some environmental rules have an hourly emission rate that companies are required to meet. This will not have that. It will have an annual type of approach averaged over the year, which means that if utilities need to have variation in their emission rates over the course of the year, they will be able to do that and still meet this because, for carbon, that makes sense.

Another flexibility we built into the rule was allowing States to join together with other States in regional plants, which even opens up the flexibility even more. And we have had a lot of interest from States in that, especially in—and are looking at more informal and less complicated ways that they could join up with one another or with other States.

Mrs. CAPPS. Thank you. You know, we have entrusted EPA and this process with promoting and protecting clean air for over 40 years. They have consistently performed well. Since 1970, EPA has cut many dangerous air pollutants by 90 percent or more. I think we lose sight of that amazing fact. And our economy, at the same time, has tripled in size. So here is another question. Do you think EPA would have had this much success protecting clean air and public health if States had been allowed to opt out of EPA regulations that they didn't like over this long history?

Ms. MCCABE. It has been absolutely essential that the way Congress set up the Clean Air Act has worked for EPA to set those national targets, and then every State to step up and do their part. And as you recognized, air pollution doesn't respect State boundaries.

Mrs. CAPPS. Absolutely. Just one—see if we can get this question in. As you know, the discussion draft before us would not only allow States to simply opt out of the Clean Power Plan if they don't want to participate, it would also delay implementation of the plan indefinitely until every lawsuit has been litigated. Ms. McCabe, is climate change an urgent problem or one that can wait indefinitely to be addressed?

Ms. MCCABE. Climate change, as is being emphasized by scientists almost every day now, is something that we must pay attention to and begin our work on now.

Mrs. CAPPS. Thank you, and I have one question. I will just put it out if you have time to address it. Ms. McCabe, what are some of the benefits that would likely be denied to our constituents if this bill became law?

Ms. MCCABE. Well, this is part of a large effort, a global effort, to address climate. This is a very significant part of that. If we don't pay attention to the increasing levels of carbon, we will see increasing weather events, air pollution, droughts, and all of the

health and welfare impacts that come along with those sorts of events.

Mrs. CAPPS. Thank you very much.

Mr. WHITFIELD. At this time, I will recognize the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman. And thank you, Ms. McCabe, for appearing here. I have got three questions if I can get to them kind of quickly with this. Representatives of FERC in 2014 made a statement and I was just calling up on my computer, my little phone here, to find out what that statement was again. They said—because your response earlier was you seemed to discount the reliability by this, is what I heard, was the grid is going to be fine under this rule. But what he—but they went on to say—FERC said that they worried that the electric grid doesn't have the infrastructure to replace the retiring coal and nuclear plants, saying some U.S. regions would be subject to rolling black-outs due to this deficiency by the year 2017. Do you agree with what FERC is concerned about?

Ms. MCCABE. I think we are all—we all want to make sure that—

Mr. MCKINLEY. That is a yes or a no. I have three I am trying to get to.

Ms. MCCABE. No, I do not agree with that.

Mr. MCKINLEY. You don't agree with that statement? OK, thank you.

The second is that Mr. Pallone said that, and I appreciate his remark, but he used a term, he said there are bad States out there. Maybe West Virginia would be considered a bad State in his eyes because 98 percent of the power that we generate—that we consume in West Virginia comes from coal. So I am curious on this concept that you are coming up with. What is the cap going to be in West Virginia, and what is the alternative that we have? If we burn coal, what are we supposed to do?

Ms. MCCABE. Yes, so the proposal was designed to accommodate States that burn a lot of coal and States that don't. I come from Indiana. It is also a State that burns predominantly coal, and when—

Ms. MCKINLEY. Well, it says here you were to change the heat rate. One of your blocks says change the heat rate, but yet there is none—there is no increased funding under the—or other groups to be able to do that research to be able to accomplish it, so I am really concerned it is a dream, an ideological dream, because I don't see how they are going to cut back, but please, if you could, what is the cap, what is the change in West Virginia, do you have a proposed idea what you want to do in the CO₂?

Ms. MCCABE. I can't tell you now what change—

Mr. MCKINLEY. Could you get back to me on that?

Ms. MCCABE. Well, in the final rule, we will reflect all the changes that—

Mr. MCKINLEY. The final—

Ms. MCCABE [continuing]. We will make.

Mr. MCKINLEY. Prior to the final rule, how are people going to respond to that if they don't know what the effect it could have on a State like West Virginia?

Ms. McCABE. Well, States like West Virginia and others have given us lots of input suggesting ways in which we ought to adjust their target.

Mr. McKINLEY. OK, so you don't have a plan. Let me—let's go to the third question. And I was reading the testimony of the next panel, and there are increases in residential electric costs associated with this act, and will be assessed in the context of the long-term declining trend of real income among American families. And Congressman Rush from Illinois made a good point, and he is concerned about low-income families. But low-income families and households have lost 13 percent of their income between 2001 and 2013. Thirteen percent of low-income families are going to struggle with this as a result of this. So my concerns are with the—and we are going to spend \$7 ½ to \$8.8 billion perhaps to be in compliance. It is going to be passed on to the ratepayers. What am I supposed to tell Mildred Schmidt who lives next-door to you or lives next-door to me, how is she going to deal with this issue?

Ms. McCABE. Well, given the reliance—the way the industry is going in terms of employing energy efficiency, we lay out that our proposal will lead to lower energy bills by 2030. So energy bills will go down, and that information is—

Mr. McKINLEY. But—

Ms. McCABE [continuing]. Available to—

Mr. McKINLEY [continuing]. I want to make sure I am hearing—you said energy prices are going to go down?

Ms. McCABE. Energy bills will go down, Congressman.

Mr. McKINLEY. How in the world are they going to go down if we are spending this—

Ms. McCABE. With energy efficiency, people will be buying less electricity.

Mr. McKINLEY. And you are serious? You really—

Ms. McCABE. I—

Mr. McKINLEY [continuing]. Believe this?

Ms. McCABE. I do. We are seeing it all across the country. We are seeing it in places like New England that have been very aggressive on energy efficiency. If we use less energy, our bills can go down. And our carbon emissions can go down.

Mr. McKINLEY. So you—so let me make sure I am clear. You are saying—your testimony here before us that by the time this thing is fully implemented, that the rate pay through the—consumers are going to be paying less electricity with electric bills as a result of having this draconian standard forced upon them.

Ms. McCABE. That is what our analysis shows across the country.

Mr. McKINLEY. Do you believe it yourself that it—Mildred Schmidt is going to be paying less for her electric bill?

Ms. McCABE. I believe that if we get serious about energy efficiency and managing the—our use of electricity, that that can lead to lower energy costs.

Mr. McKINLEY. Unbelievable. It just seems delusional. Thank you very much.

Mr. WHITFIELD. I may just make one comment. The Energy Information Agency just released a report showing the electricity

rates for the country between 2014 and 2015 have gone up for the entire country.

At this time, I would like to recognize the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman, and ranking member, for holding the hearing. The EPA's Clean Power Plan has been subject to much debate. The Supreme Court has consistently agreed the EPA has the authority to regulate greenhouse gases, so the legal challenges facing the Clean Power Plan are very interesting. I have been in Congress for some time, and since I joined the House, worked extensively on trying to pass commonsense environmental legislation, and unfortunately, we haven't done that in the last few years. We need to work together to address the issues of carbon emissions, and that doesn't mean eliminating certain fuels, and it certainly doesn't mean eliminating the EPA. We need to represent our constituents to find that exception or compromise. I want to thank the EPA because we just learned that the partnership with the input you are getting from Federal Energy Regulatory Commission on the reliability issue. That is one of the concerns we have. Of course, if there is a reliability issue it could also impact the prices because some of our markets are competitive. So the EPA, at least from what I saw, understands they don't understand reliability but FERC does, and so we want to make sure whatever you do does not cause reliability issues in our communities.

Recently, you and Administrator McCarthy indicated willingness to address issues with the interim deadlines of the CPP. I repeatedly supported efforts to implement rule changes with timelines that allow industry time to adjust to protect for reliability. It is important for the sake of our economy, electricity reliability, and workforce that we give ample time to implement the new rules. What types of comments did EPA receive regarding the interim goals that led the agency to make these statements?

Ms. MCCABE. Yes, that is an issue that we got a lot of comment on, Congressman, and just to make sure everybody knows, the ultimate compliance deadlines for the rule is 2030, but the proposal had an interim goal that would operate between 2020 and 2029. And we heard from some States that that posed a very substantial reduction on them early in the process. Our intent was to make sure that progress was being made in this run up to 2030, but in a way that could be moderately metered-in, in a way, so that reasonable choices could be made.

So we have heard all the way from don't have any interim targets, to other sorts of ideas about how to adjust those, but primarily the issue has been don't have it so that any one State has a significant initial reduction that they have to make as quickly as 2020.

Mr. GREEN. Would interim relief provide States enough time to draft State implementation plans and receive guidance from EPA?

Ms. MCCABE. Certainly. And we are already gearing up to provide States with guidance and information on how to put their plans together.

Mr. GREEN. Does EPA believe that concrete monitoring requirements and performance metrics would accomplish the same goals

as the Clean Power Plan but allow the States to tailor a path to 2030?

Ms. MCCABE. Well, the plan would allow the States complete latitude to design plans that make sense for them.

Mr. GREEN. The—obviously, the large-scale reduction is challenging, especially when addressing the last few percentage points. Does EPA's Clean Power Plan include graduation dates to accommodate the States' efforts to reduce emissions? Do they get credit over a period of 10 years to 2030?

Ms. MCCABE. Yes, sure. I mean they work their way down to that final timeline. And I should note too that as has always been the case with State implementation plans on air quality, there are opportunities along the way to make adjustments if needed.

Mr. GREEN. How does EPA think—what does EPA think about the reliability safety valve for States requiring compliance and flexibility to address reliability issues would have FERC sign off on the nature of the reliability problem. Do you think that would be workable?

Ms. MCCABE. We think there are a number of good ideas about how to manage something like a reliability safety valve. You know, we employed something like that in the Mercury and Air Toxics Rule that has turned out to not be needed by very many people at all, but it was good to have it there as a backstop. And we are in good discussions with FERC about the options there.

Mr. GREEN. So we are not reinventing the wheel here. It has been used before and can be used again here?

Ms. MCCABE. That kind of approach was used before, that is right.

Mr. GREEN. Thank you, Mr. Chairman. I yield back.

Mr. WHITFIELD. At this time recognize the gentleman from Pennsylvania, Mr. Pitts—no, Mr. Barton from Texas for 5 minutes.

Mr. BARTON. I am willing to let Mr. Pitts go if he is—well, thank you, Mr. Chairman. Thank you, Mr. Pitts. Thank you, Honorable McCabe, for being here.

I have a few comments I want to make, then I have a—several questions.

My first comment is that there is absolutely no health benefit to this proposal. EPA's primary responsibility is to protect the public health, and the Clean Air Act gives the EPA wide authority and wide latitude in order to do that. It is one of the few Federal agencies that has the authority to set a rule without any real consequences being looked at in terms of a cost benefit if the Administrator thinks that it is in the public interest, to protect the public health, but this particular rule has no health benefit at all. What it is is a politically correct social policy.

Now, that may be acceptable, it may not be, but this is not a health-based rule. It is not a rule based on a real economic science, nor is it required by any existing Federal law. There is no Federal mandate and statute right now that requires this rule to be set. Again, it is simply the Obama administration deciding what is politically correct social policy, and they are foisting it on the States to comply.

I don't think it is going to actually be implemented, I think the courts are going to strike it down, but if it were to be implemented

or attempted in a serious way to be implemented under the current timelines in the proposed rule, the only certainty would be that electricity rates would go, reliability would go down, and there would be routine blackouts in many parts of the country. Now, as you know, Madam Administrator, we had a blackout here in Washington, DC, not too long ago, a temporary blackout. As you also know, we had a coal-fired power plant in Virginia that was in Virginia and was shut down not too many years ago. If that power plant had still been online, there wouldn't have been a blackout.

Now, I don't travel much internationally, but I do travel some, and there are parts of the world where it is a given that there is not 100 percent electricity reliability, and people plan for it. Fortunately, we don't have to do that here in the United States, but if this rule were to actually be implemented, that would become an occurrence that would not be unusual.

Now, my first question to you is, what does the EPA consider to be a—an acceptable price for electricity for the average retail consumer per kilowatt hours?

Ms. MCCABE. I don't have an answer to that, Congressman. We work—

Mr. BARTON. You don't have an answer?

Ms. MCCABE. We work with the energy regulators. That has been a significant issue that is not within EPA's jurisdiction. What we do is we look at expected impacts on—

Mr. BARTON. Well, do you accept that if you shut down 30 percent approximately of the coal-fired generation's capacity in the United States, that there is going to be an adverse price impact because of that?

Ms. MCCABE. Well, I don't believe that our proposal predicts anywhere near that kind of impact.

Mr. BARTON. OK, what does—

Ms. MCCABE. And I—

Mr. BARTON. In your—what do you say—the studies I have shown indicate that, but I am not as aware of all the studies. What is the official EPA impact, and what percent of the coal-fired power generation is going to be shut down if this is implemented as the EPA projects it to be?

Ms. MCCABE. Well, let me emphasize again that there are lots of reasons why power plant shut down.

Mr. BARTON. Well, why don't you just answer my question?

Ms. MCCABE. In the—

Mr. BARTON. EPA certainly has some projection about how many—what percentage the coal-fired capacity in the United States of electricity generation is going to be down.

Ms. MCCABE. In our—

Mr. BARTON. I am told it is 20 to 30 percent.

Ms. MCCABE. In our regulatory impact analysis, if I remember correctly, and I will confirm this for you, I believe that we projected that about 10 percent—

Mr. BARTON. Ten percent.

Ms. MCCABE [continuing]. Of coal plants would become uneconomical. Keeping in mind—

Mr. BARTON. Did you—

Ms. MCCABE [continuing]. That—

Mr. BARTON. Did you provide that to the committee, because that is about half of the most benign economic study that I have seen. I am not saying you are wrong, I am just saying it seems to be overly benign.

Ms. MCCABE. We will confirm that for you, but that is a reflection of the flexibility and the time that is allowed in this plan, and the fact that the average age of the coal-fired fleet in this country is——

Mr. BARTON. Well, my time has already expired. Let me ask one—do you think it is fair that one State, i.e., my State, the State of Texas, by itself has to have 20 percent of reductions for the whole country?

Ms. MCCABE. The State of Texas has significant carbon emissions because of its size and the amount of power that is produced there.

Mr. BARTON. So——

Ms. MCCABE. This will——

Mr. BARTON [continuing]. The Obama administration is just telling Texas to go jump in the lake, we don't care about your economy.

Mr. WHITFIELD. Gentleman's time has expired.

Ms. MCCABE. Not at all.

Mr. WHITFIELD. At this time I would like to recognize the gentleman from Pennsylvania, Mr. Doyle, for 5 minutes.

Mr. DOYLE. Thank you, Mr. Chairman. And welcome. Administrator McCabe, a lot of people are speculating about the impact the rule is going to have on reliability in the grid, and we know it is a very elaborate, complicated machine. I am not sure there is any way to actually know the impact until States all submit and implement their respective plans, and because the grid is so interconnected and you expect 50 different State plans. Can you talk about the administration's plan to ensure that all of these plans work together in a way that protects the reliability of the grid, because we know energy production and consumption isn't always limited by State lines?

Ms. MCCABE. Yes. So there are a couple of good points that you raise. One is that we don't know what the State plans will look like, and so a lot of the predictions about things that will or won't happen are based on people not knowing what choices States will make. The other is that, as you pointed out, it is an interconnected system. In fact, many power companies themselves operate in multiple States. And what we are seeing, which is very positive, is lots of conversations happening both between the energy regulators and the environmental regulators, and also between the power companies and the State Governments across State lines in regions, talking about ways that they can work together. How the—how States can set up their plans so that they can interconnect with each other in ways that make that sort of either averaging or working together across companies, across States, very easy to do. And all of those things will help make sure that power is where it needs to be, when it needs to be, over this long trajectory of implementation.

Mr. DOYLE. Let me ask you about how this proposed rule treats nuclear power, specifically, existing plants which we have in Penn-

sylvania. It is, as you know, our only source of reliable base-load electricity that is carbon-free, but my understanding is the proposed rule gives States little credit for preserving plants in the nuclear fleet, approximately a 6 percent credit. Is EPA reconsidering how it treats existing nuclear power plants in its rule? It seems to me that any nuclear power plant whose operator makes the significant investment to pursue relicensing during the compliance period, that should be treated as new capacity. And I say that because there is no guarantee that the NRC would grant such a license, and it is far from assured that plant operators will make the commitment and spend the money to pursue relicensing when many of these plants are already financially challenged. So it just seems to me if we start to lose a large chunk of our nuclear fleet, I don't see how we are going to meet our greenhouse gas goals.

Ms. MCCABE. Yes.

Mr. DOYLE. So how are you going to treat the existing—

Ms. MCCABE. That is a very good point, and we did receive a lot of input on how we proposed to handle nuclear plants, so we are thinking very hard about that. Our intent certainly is not to put any barriers in the way of continued use of nuclear power seeking relicensing, upgrading, if that is appropriate, plants that are under construction going forward. We also recognize some of the challenges that that industry is facing today, and we don't want the Clean Power Plan to interfere with the use of that power. So we are looking at all of that, Congressman, and we will be addressing—

Mr. DOYLE. And are you considering looking at relicensing as—

Ms. MCCABE. We are looking hard at that issue and considering what our options are there.

Mr. DOYLE. I see. Also I want to talk a little bit about the concerns people have of the impact on base-load power plants. You know, we can argue over the merits of this type of power, but for the time being and the foreseeable future, these are the plants that are providing the bulk power that we rely on. Are you concerned about the impact that closures on the grid, its operation, its ability to perform in severe circumstances, has the EPA conducted any low-flow analysis to determine the impact on power flows and grid stability—

Ms. MCCABE. Well—

Mr. DOYLE [continuing]. Both on this rule?

Ms. MCCABE. As part of our proposal, we took a look forward and it is not a reliability analysis in that normal sense of the word, but we took a look into the future and we are comfortable that what we were putting forward was a reasonable approach to—in order to preserve reliability. Coal would remain about 30 percent of the Nation's power supply in 2030, so many of those base-load plants would become efficient and would continue to operate. There are lots of other organizations that are looking at these issues. The Federal Energy Regulatory Commission just held a series of 4 hearings that we attended and were very involved in. So we—this is not EPA's area of expertise, so we know that we need to be communicating and working with the agencies whose expertise it is to make sure that we are doing this right.

Mr. DOYLE. Thank you.

Mr. Chairman, thank you.

Mr. WHITFIELD. Thank you.

At this time recognize the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes. Gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Well, thank you, Mr. Chairman. And, Madam Administrator, thanks very much for being with today.

In the proposed Clean Power Plan, EPA estimates costs of between \$5.5 billion and \$8.8 billion every year for each of the years from 2020 through 2030. Are these costs over and above the costs associated with EPA's Mercury and Air Toxics Rule, which EPA estimates will cost about \$9.6 billion annually in the coming years?

Ms. MCCABE. Those are costs associated with this program.

Mr. LATTA. Let me ask, now, how did you come up with those estimates?

Ms. MCCABE. We used standard approaches and guided by guidance from the Office of Management and Budget, working with our economists in EPA to make determinations about the expected costs and the benefits.

Mr. LATTA. OK. And, you know, just to follow up where Mr. Barton was with his questioning. Has the EPA done an analysis of the accumulated effect on the electricity rates of all its recent major air rules affecting power plants?

Ms. MCCABE. No. No, we haven't.

Mr. LATTA. You have not?

Ms. MCCABE. I don't believe we have.

Mr. LATTA. OK. Given the billions of dollars and new costs from these rules that have not yet been reflected in the rates, shouldn't the EPA be producing a clear cumulative assessment for the public to review? And just to, you know, I know the folks in this committee have heard me say it before, but I represent a district of about 60,000 manufacturing jobs, and a lot of my jobs out there are in plants that use—that are really high users of electricity that keep these people working every day, but is there a clear cumulative assessment for the public to review out there from the EPA?

Ms. MCCABE. Well, it is—there are many things that—of course, as you know, that go into the cost of electricity, and so EPA, as we are required to do, for each program we look at the costs associated with that program, and each program before it has looked at the costs associated with that program.

Mr. LATTA. And, you know, on the next panel you might have already seen who is going to be testifying before us, but the next panel we have some very powerful testimony about the impact the higher rates on families with middle or lower incomes, and what assurances can we give these ratepayers in 31 States reviewed that they don't need to be concerned about higher electricity rates?

Ms. MCCABE. Well, I think as we have discussed already here this morning, there are a number of elements that go into this proposal and will go into the final rule that will give States flexibility to make sure that they are implementing this in a way that can protect especially lower income ratepayers, which is something that States are very conscious of, and have tools at their disposal to do.

Mr. LATTA. Great, I was just talking a bit about what happened in my State, in Ohio, under the EPA—under Ohio EPA's comments

on the proposed Clean Power Plan. It indicated that compliance with building block 2, and building block 2 was the use low emitting power sources, using lower emitting power plants more frequently to meet demands means less carbon pollution is what it says here in building block 2. Under the Ohio EPA's testimony, they are looking at the cost to Ohioans of approximately \$2.5 billion more for electricity rates in 2025 alone. And similarly, the chairperson of the Wisconsin Public Service Commission recently testified that the proposed Clean Power Plan would cost Wisconsin ratepayers between \$3.1 billion and \$13.4 billion, and this is only a production cost increase. It does not include necessary upgrades to the gas and electric transmission infrastructure that is also going to add up to the cost for compliance. Are these types of costs to implement the Clean Power Plan acceptable to the EPA's perspective?

Ms. MCCABE. Well, I—it is hard to assess costs for a plan that no State has developed yet and so I can't really speak to that, but I will point out that in the industry, we are seeing an increased use of gas and less use of coal because of fuel prices, gas-based generation is quite economical compared to coal, and so this is the way the industry is going. That is exactly how the Clean Air Act tells us to build our rule is to look at the direction that the industry is going and set targets based on that.

Mr. LATTA. Well, and, you know, like in the State of Ohio we have a lot of plants that are either going to have to be shutting down or converting. The number is over 40, but we have to also consider in that number and that cost that they are either going to have to convert those plants or build brand new plants. And so just because the cost of a certain energy out there might be lower today, we still have to have the infrastructure and the plant to be able to produce that power. And so I think those are things that, you know, the EPA has to really look at when you are looking at these numbers.

Mr. Chairman, I see my time has expired and I yield back.

Mr. WHITFIELD. Gentleman yields back.

At this time recognize gentleman from Kentucky, Mr. Yarmuth, for 5 minutes.

Mr. YARMUTH. Thank you, Mr. Chairman. Administrator, thank you for being here today. You know, I haven't been on the committee for a long time, and already this conversation is sounding a lot like Groundhog Day, which is OK because I know my lines in this play. One of the things that astounds me as we talk about environmental issues, and we do week after week in this subcommittee, is that we get a lot of alarmist talk and this has been the historical pattern for as long as the EPA has been in existence, and I recall the same kind of concerns with acid rain, the same kind of concerns with mercury, and the same kind of concerns when we passed Waxman-Markey, at least in the House, in 2009. So just as a—an analysis that I make, when we were analyzing Waxman-Markey back in 2009, and we had made some significant changes in the way the original bill was introduced that made it easier for States like Kentucky, which gets 92 percent of its energy from coal, to comply without an adverse impact on our constituents, I started calling on major users of electricity, UPS, or the

global hub of UPS, Ford Motor Company, General Electric, the Louisville Metro Government, University of Louisville, all of those users, and without exception they were either for the plan or neutral on the plan. So they had made an assessment that there was not going to be a significant impact on their utility costs. As this rule has now been circulating—this proposed rule has been circulating, I have waited for my constituents to chime in, and the same reaction I have gotten, we haven't heard from anybody who is concerned about the long-term implications of this new rule. And I think the reason is that early on the EPA did allow flexibility—include flexibility among the States. Our Governor and our energy department came up with a plan that they thought could help us comply with minimal impact on our consumer rates, and we have to reduce our emissions by 18 percent between now and 2030 under the rule. That is a little more than 1 percent a year. So when you actually frame it that way, the idea that we couldn't come up with 1 percent reduction a year just by using conservation, changing installation patterns, classes, so forth, is kind of silly. And I suspect, and with all due deference to Texas, I don't know Texas' situation, it seems to me that that is a small price to pay to have a significant reduction in carbon emissions. In my district, carbon emissions not only add to global climate change but also to respiratory problems. As always, it was a documented correlation between emission of carbon dioxide and those problems. We have a huge problem in the immediate proximity to power plants in my district in Louisville. So all of these things, these doom and gloom scenarios, and I don't want to use the pun of the sky is falling, but the doom-and-gloom scenarios seem to me to not play out in reality.

So one question I would ask you is that under the proposed terms of the legislation that we are discussing, do you see any scenario in which refusing to do your own plan or opting out of a Federal plan would result in a safe, low-cost, and clean electricity system going forward?

Ms. MCCABE. I think it would be very disruptive to have a system where States could opt out of a federally required plan that other States are doing, and especially with an interconnected, interstate power system.

Mr. YARMUTH. The chairman asked a little while ago, and the chairman is a good friend, why we were doing this, the proposed rule, when there are so many—being filed, my State has joined, and my—full disclosure, and I think we can probably say the same thing—ask the same question about this bill. Why would we do this when this bill passed and get vetoed, and it would never be overridden, but we are getting, again, to make the same arguments that we made week after week after week. So I want to thank you for your work. Again, I think thanking you for providing the States the flexibility to tailor their plans, and if we go forward and this is the final action, Kentucky will have a very workable plan to meet the obligations of the act, and with minimal impact on our consumers. So thank you for that.

And I yield back.

Mr. WHITFIELD. At this time recognize the gentleman from Kansas, Mr. Pompeo, for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman. And thank you for being here today Ms. McCabe.

I saw a recent trade report that said there were roughly 640-plus State implementation plans that were backlogged. Is that report correct or roughly correct?

Ms. MCCABE. That sounds about right. That refers to a number of different submissions that States would have made, some of them very minor.

Mr. POMPEO. Could you provide us a list of all those 650-plus backlog—

Ms. MCCABE. I don't think—

Mr. POMPEO [continuing]. SIPs?

Ms. MCCABE. I don't think we have a list of them all because these are handled by our regional offices.

Mr. POMPEO. Could you not put them all together? I mean—

Ms. MCCABE. Well, I will take that back—

Mr. POMPEO. That same—

Ms. MCCABE. I will take that back, Congressman.

Mr. POMPEO. Wow, can't put together a list from the regions, that is something. Does that not indicate that when these States put together these plans, these are very short timelines for approvals, they didn't—implementation plans, that there is some risk that the Clean Power Plan might not be able to work, you just don't have the resources to do that and approve these plans in a timely fashion?

Ms. MCCABE. No, I expect that the agency would make sure that we—

Mr. POMPEO. So you get to these and you put these other 655 in the back of the queue?

Ms. MCCABE. Well, Congressman, if I could take a minute and explain. The—

Mr. POMPEO. You can take about 10 seconds.

Ms. MCCABE. We work with the States to prioritize the plans that they submit to us that make the most different for public health and welfare in the States, and some are less critical, and so they—we don't get to them as quickly.

Mr. POMPEO. You said a minute ago that you thought that the cost for consumers would be reduced, as a result, at the end of 2030 ratepayers would have a lower burden, is that correct?

Ms. MCCABE. That is what our regulatory impact analysis says.

Mr. POMPEO. Why on Earth are you worried about a State opting out if this is so great? You seem very concerned that a State might opt—I can't imagine some Governor opting out when it is going to save his ratepayers money. I am interested in why you are concerned about that.

Ms. MCCABE. Well, I think we are hearing from a number of States that they don't agree with this program, and so it seems like there might well be States that would—

Mr. POMPEO. Why do you think—

Ms. MCCABE [continuing]. Opt—

Mr. POMPEO [continuing]. You know more than they do—

Ms. MCCABE. Well—

Mr. POMPEO [continuing]. About what it is going to cost the ratepayers? I mean if this is such genius and such glory, and such an

enormous cost savings, why aren't—you said the northeast was doing it already, right? Didn't you say the northeast was already doing efficiency gains?

Ms. MCCABE. Yes.

Mr. POMPEO. Why do we need this rule? It is—this is beautiful, this is lower cost and lower CO₂, this is magic.

Ms. MCCABE. Well, this is an urgent environmental public health and economic problem that we are faced with—

Mr. POMPEO. And you assume the Governors care about that too, right? These aren't bad—these Governors aren't up to hurt the people in their State, correct?

Ms. MCCABE. The States are moving in different directions—

Mr. POMPEO. No, answer my question. Yes or no, are Governors trying to harm the health of their constituents?

Ms. MCCABE. I assume the Governors are not trying to harm the—

Mr. POMPEO. Right, and they would like to reduce the rates for their constituents too, is that right?

Ms. MCCABE. I would—

Mr. POMPEO. So tell me why your rule is needed if this is such an uninhibited good.

Ms. MCCABE. Under the Clean Air Act, we have an obligation to address air pollution that is harming the public wealth and—health and welfare. Carbon has been identified and confirmed now by the Supreme Court that it is doing that. We are moving forward with—

Mr. POMPEO. Let's get to health. You talked about asthma. How many fewer asthma cases as a result of the Clean Power Plan?

Ms. MCCABE. We predicted there would be thousands of fewer exacerbated asthma—

Mr. POMPEO. How many? Where is the report, where is the study that shows exactly how many fewer asthma—

Ms. MCCABE. Those predictions are laid out in our regulatory impact analysis.

Mr. POMPEO. How much more increased snowpack as the result of the Clean Power Plan?

Ms. MCCABE. That is not something that we predicted, and that is not something that you could predict from—

Mr. POMPEO. These are your indicators. These are EPA's indicators of climate change. They are on your Web site. I am staring at it right now.

Ms. MCCABE. Yes.

Mr. POMPEO. I assume there will be a benefit to the snowpack, so how much more snowpack as a result of the Clean Power Plan?

Ms. MCCABE. Climate change is affected by many things and needs to be looked at over a long—

Mr. POMPEO. You can't—yes or no, will there be more snowpack as a result of this rule or less?

Ms. MCCABE. That is not something you can predict.

Mr. POMPEO. So you don't know. The answer is you don't know.

Ms. MCCABE. That is not something that is predictable by—

Mr. POMPEO. How many fewer heat-related deaths as a result of the Clean Power Plan?

Ms. MCCABE. I don't know. I will—

Mr. POMPEO. You don't know? How much sea-level rise will be diminished as a result of the Clean Power Plan?

Ms. MCCABE. This is one step, Congressman. It takes many, many steps.

Mr. POMPEO. Right. The answer is you don't know, correct? You don't know the answer to the question. You don't know. These are your indicators, this is your science, this is your assertion, it is in deep disagreement with lots of other folks who have a different view of this, and yet you won't put forward the health-related benefits that are associated with this in a scientific way. Instead, you come before us today and make assertions unsupported by data, unsupported by science, and you list a series of indicators and you say, gosh, we are going to put this enormous cost—your own data says in the billions of dollars, but we don't know what health impact this will have on America. Mr. McKinley said earlier this is delusional. It is worse than that; it is unfounded in science. And for that reason alone, we need to move forward with this legislation.

And, Mr. Chairman, I thank you for having this hearing today.

Mr. WHITFIELD. At this time recognize the gentleman from New York, Mr. Engel, for 5 minutes.

Mr. ENGEL. Thank you. I would like to first give Administrator McCabe a chance to answer some of these questions because I don't understand why some Governors have an ideological—they seem to do things that would pollute the air and not be very beneficial to their constituents. Would you care to elaborate any more because you didn't have very much chance to expand on your thoughts?

Ms. MCCABE. Well, people have different views, and States take different approaches to things. What I was trying to say, Congressman, and I appreciate you giving me the opportunity, is that Congress, in setting up the Clean Air Act, set up a system where the Federal Government would set expectations for protecting public health and welfare across the country, recognizing that States make different choices, but also recognizing that a child in Washington State and a child in Florida should have just as clean an environment, regardless of individual choices that their States might make.

Mr. ENGEL. Yes, I couldn't agree with you more. And let me remind my colleagues that the Clean Air Act was enacted by an overwhelming bipartisan majority, was signed into law by President Nixon, and it stands as one of the most successful public health laws in our Nation's history. Today's discussion draft would definitely delay implementation of the Clean Power Plan and allow Governors to essentially opt out if they and they alone determine that their compliance would adversely impact ratepayers or electric reliability. It is a fact, is it not, that the United States emits more carbon pollution than any other nation except China, and existing power plants are the country's largest single source of carbon pollution? Is that a fact?

Ms. MCCABE. That is correct.

Mr. ENGEL. So it is obvious that these emissions have significant health impacts that threaten the lives and wellbeing of people all over America. But since 1970, we have cut many dangerous air pollutants by 90 percent or more, and while our economy has tripled

in size, and I believe that means millions of lives have been saved and illnesses avoided, and let me quote an EPA analysis which estimates that in the year 2010 alone, the Clean Air Act has prevented over 160,000 premature deaths, 130,000 cases of heart disease, 1.7 million asthma attacks, 86,000 hospital admissions, and billions of respiratory illnesses. The monetary value saving Americans from those harms is projected to reach \$2 trillion in the year 2020 alone, and from 1990 through 2020, the monetary value to Americans is projected to exceed the cost by a factor of more than 30 to 1.

I am particularly interested in, Madam Administrator, because my district has some of the highest rates of asthma in the United States, rates of death of asthma in the Bronx where I am from are about three times higher than the national average, hospitalization rates are about five times higher, and it seems to me that today's discussion draft would endanger lives and jeopardize health are dramatically weakening and delaying Clean Air Act safeguards.

So let me ask you, Madam Administrator, will you please talk about how air pollution impacts the health of our communities, and explain how this discussion draft would delay or prevent the air quality benefits of the Clean Power Plan?

Ms. McCABE. Well, it is very clear that air pollution does affect the health of people in our communities, and especially low-income and communities of color that already are suffering from a variety of pressures on their health and on their healthcare. Higher levels of particulates and nitrogen oxides and sulfur dioxide lead to asthma, as well as heart attacks, other sorts of respiratory illnesses, and in some cases premature death. And all of that information is very well established and very well laid out. So the Clean Air Act has been incredibly helpful to the public health of this country, saving much suffering, much cost to those families' lives and to the economy from the healthcare costs avoided.

Mr. ENGEL. Can you elaborate on the State flexibility, because there is flexibility, of the Clean Power Plan in terms of State implementation?

Ms. McCABE. Yes. There is a long trajectory in time for States to design plans that work for them. There is no prescribed approach for any State to follow, so they can be very respectful of their particular power sources and the needs of their communities. There is the ability for States to cooperate with other States, either near or far, in small or large groups, to widen the pool of cost-effective approaches. So this system which Congress set up to allow States to do these sorts of plans is very well designed to afford lots of flexibility.

Mr. ENGEL. Well, thank you. And thank you very much, and I am very pleased that you are raising these issues today because the health of our constituents depend on it. Thank you so much.

Ms. McCABE. Thank you.

Mr. WHITFIELD. At this time recognize the gentleman from Illinois, Mr. Kinzinger, for 5 minutes.

Mr. KINZINGER. Thank you, Mr. Chairman. Administrator, thank you for being here with us. Appreciate your service and to be willing to come in front of the committee.

In the proposed rule, your agency states specific goals for reducing carbon dioxide in the power generation section. More specifically, the rule says that once final goals have been promulgated, a State will no longer have an opportunity to request that the EPA adjust CO₂ goals. I just want to delve into that a little bit just so that I know. In the final rule, will the carbon dioxide goals set for each State be fixed, or will they be fixed in number?

Ms. McCABE. That is what we proposed, and so we are looking at the comments that we received on that, Congressman, so we are looking at that, but—

Mr. KINZINGER. OK.

Ms. McCABE. The idea is that States should be able, once the rule is final, to go forward and develop and implement their plan.

Mr. KINZINGER. So let me delve into that a little further. You know, I have seen a number of studies come out recently concerning the price, we have talked about that a lot, the price increase with these rules potentially. Will there be an opportunity for a State to request that the EPA adjust those goals if the State administrators find that those goals will cause electricity prices to substantially increase?

Ms. McCABE. That is not what we propose. We believe that the plan allows enough flexibility that States should be able to implement these plans in a way that is reasonable—

Mr. KINZINGER. Well—

Ms. McCABE [continuing]. And will protect—

Mr. KINZINGER. What kind of flexibility—I mean if you have a number that is set and when the State basically comes back and says, hey, look, we have information that says this is going to skyrocket prices on our customers, what is the flexibility that we can adjust that besides actually adjusting that if that number stays fixed?

Ms. McCABE. Well, I would say that if a State found some sort of extraordinary problem with the plan that it had developed, there is always the ability to come back and talk to EPA about making adjustments, but it is important that—

Mr. KINZINGER. You just said it is fixed, though, it is a fixed number.

Ms. McCABE. But it is important that the goals be clear and it is important that the goals be fairly set across the country from—

Mr. KINZINGER. Well, yes, and I get the clear thing, and if this works out, I would imagine a State would want to stick with it if, as you say, this drives down prices and it is amazing, but if they find out that this isn't, you know, quite what it is sold to be, I mean I would think that there would be an opportunity to address that beyond extraordinary measures, something that would be—doesn't even have to be extraordinary, just taking measures to adjust something that doesn't seem to be working out.

Ms. McCABE. I think we need to remember that these plans will be implemented in the context of the changes that are happening in the energy system now. So—

Mr. KINZINGER. So the same is for the assigned goals in terms of reliability should there be an opportunity if reliability, not just pricing, you know, pricing we can get, but reliability is the real na-

tional security issue, would there be an opportunity for States to make an adjustment if that situation became—

Ms. McCABE. Right. So as I have said already this morning, we are looking at talking with organizations like FERC and others who are expert in these issues to make sure that our final rule will protect reliability.

Mr. KINZINGER. Well, I would hope so, and I just want to add that, you know, look, pricing increases to me is very important and it is very detrimental, but I think even above that is, you know, power reliability issues, and there ought to be a real off-ramp. And I would also add, you know, and I think I would probably get the same result from you, but when it comes to like issues of job loss, if it is proven that this could create job loss, there ought to be an opportunity for States to make adjustment. Would there be any other Federal agency or State agency that would have a role in deciding whether to change the goal at this point if you were setting out goals for States, any agency besides yours that would have any input in that?

Ms. McCABE. Well, it is really EPA's responsibility under the Clean Air Act to make those decisions.

Mr. KINZINGER. OK. And I just—I already talked about, you know, the issue of an off-ramp if you have reliability and you are going to want to put in a good word for that because I think that will be extremely important, and you have probably seen that in a lot of your comments. So, you know, with all the regulations coming down from EPA, and the discussion of this, are we locking States into economic hardship in regards to these mandates coming down from the Federal Government as a result of these duly proposed rules?

Ms. McCABE. I would say that we are not, Congressman. I know there is a lot of debate about those issues, but I would encourage people to think about the flexibility that is here, the opportunities that people are seeing, there is a lot of positive conversation going on around the country.

Mr. KINZINGER. I agree, and I would love to see positive conversation and flexibility when it comes to your role in this because I think, you know, listening to the States on the ground that have a real interest in this that, you know, live this day-by-day, you know, I fly airplanes, I am not a manufacturer so I listen to a lot of manufacturers about what works with that. It has become an—so I would hope you would listen to States in this process and understand what situations may come along.

With that, I will yield back.

Mr. WHITFIELD. Gentleman yields back.

At this time recognize the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. CASTOR. Thank you very much, Mr. Chairman. And welcome, Administrator McCabe.

As—under current laws, EPA begins down the road with the Clean Power Plan, you—EPA will set the overall carbon emission reduction goals under Section 111(d) of the Clean Air Act, and then it is up to States to determine how best to achieve the reductions. And as States begin to set the goals and establish plans for carbon reduction, it is clear that consumers' pocketbooks will be better off

when States plan ahead, and when they use many different and varied tools to reduce carbon emission. You mentioned a few here today. Conservation plans for States, are consumers going to be better off if a State has a robust conservation plan?

Ms. McCABE. Yes, they will.

Ms. CASTOR. And energy efficiency?

Ms. McCABE. Yes, absolutely.

Ms. CASTOR. So what do you say to States that are moving backwards on that today?

Ms. McCABE. Well, it seems that there are opportunities out there that we would think every State would want to take advantage of, and some States are further ahead than others, and that is what the Clean Power Plan anticipates, is that those kinds of measures will indeed be implemented.

Ms. CASTOR. Wouldn't that raise a red flag for consumers if they know, OK, we have to have—we have to reduce carbon pollution but then leadership at the State level says, well, we are—our idea of doing that is to eliminate conservation goals, shouldn't that raise a red flag for consumers and their pocketbooks?

Ms. McCABE. Well, a lot of Americans across the country are very smart about these issues, and we are hearing that they are in favor of moving forward with this kind of plan for both the economic and the public health benefits that it will provide.

Ms. CASTOR. Now, what is the starting line on this? For States, what do you tell them is the baseline, because you have to establish a place in time where all States have to start, and then measure their plans and their goals for reduction.

Ms. McCABE. Right. So we started with 2012. This is a rule that requires us, as I have mentioned this morning, to look around and see the effective measures that are being used, and have an expectation that those will be increasingly used all across the country. So that is what we did, but we looked at States where they were in 2012 and projected forward.

Ms. CASTOR. So if they have reduced their carbon emissions from 2012, they will get some credit towards their State goals.

Ms. McCABE. Well, their carbon emissions are down. They have already taken steps to implement energy efficiencies, invest in renewables, their carbon emissions are already going down so they are that much closer to their goal.

Ms. CASTOR. Is there any way for a State to get credit for reduction prior to that date of 2012?

Ms. McCABE. Well, this is a good issue, and a lot of people have raised it to us and given us different ideas about it. The key issue is any reduction made early is a reduction that doesn't need to be made later. So that is a very good thing for people to do, and as you have noted, planning, having a robust planning process is going to make it the most cost-effective, affordable, and reliable as the States implement their plans.

Ms. CASTOR. Now, one of the problems I see in—especially in my home State of Florida where the costs of the changing climate are so severe in the years is the problem the State utility framework and how—and the costs that they can consider because, typically, in the Public Service Commission framework and utility regulations, they don't consider costs of flood insurance, because the—of

sea level rise, they don't consider cost of property insurance increases on consumers, they don't have to take into account increases to property taxes when a local government has to address flooding from storm water. Can the EPA provide any guidance to States on this, or you say you have all the flexibility in the world, States, and you need to consider those costs broadly?

Ms. McCABE. Well, we do give—the Clean Air Act gives the States the flexibility to do that. I will note that we predict in our regulatory impact analysis a significant debt economic benefits from this rule on the order of 30 to \$49 billion, and that is taking into account the expected benefits to constituents like yours in Florida that are seeing the impacts of climate change today.

Ms. CASTOR. I am sorry, I have run out of time. Thank you.

Mr. WHITFIELD. At this time recognize the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you very much, Mr. Chairman.

In response to your answers to several people, including Representatives McKinley and Pompeo, I would just have to point out that the Virginia State Corporation Commission does not agree with you that this is going to somehow make the price of electricity go down, and I quote, “To achieve the carbon emission reductions required by the proposed regulations, customers in Virginia will likely pay significantly more for their electricity. The incremental cost of compliance from one utility alone, Dominion Virginia Power”—which only serves 2 of the 29 jurisdictions I represent—“would likely be between \$5.5 and \$6 billion on a net present value basis in addition to new investment, Virginia residences and businesses will also be responsible for paying remaining costs for useful existing facilities forced to retire prematurely under the proposed regulation. The proposed regulation places a risk several billions of dollars of recent investments in existing coal-fired facilities. Contrary to the claim that rates will go up but bills will go down, experience and costs in Virginia make it extremely unlikely that either electric rates or bills in Virginia will go down as a result of the proposed regulation.” Now, I assume that you are aware that the Virginia State Corporation Commission is not some private body of electric generators, that is the regulatory agency that sets the electric rates in Virginia, that says what the companies can charge, and they say, just to one company, it is going to cost 5 to \$6 billion. When you add in all the other companies, it is going to be billions, and that it is highly unlikely that the rates will go up but the bills will go down, they said “extremely unlikely,” let me get it correct. I said “highly,” they said “extremely unlikely that either electric rates or bills in Virginia will go down as a result of the proposed regulation.” So I just point that out to you so when others say please listen to these folks, they have decades of experience in figuring out what the rate is supposed to be so that the electric companies don't charge too much, but get a return for their heavy investment.

Now, that being said, you also indicated that folks were moving to gas-based generation because it is more affordable. That is true today, although even last year for a number of months, the rate was over—the cost of natural gas was higher than that which it cost to create the same number of BTUs with coal, that fluctuates,

but further, you have to build pipelines. Now, right now in my district, there is a big pipeline being proposed to be built, and in the noncoal-producing areas of my district, people are opposed to that pipeline because they are not sure that at that size it is going to be safe. So I submit to you that we may not be ready in 2020. And further, I would ask, don't you all work with the DOE, because they are working on clean coal technologies and they have indicated to us that it will be probably about 2025 before those new technologies are onboard. But according to your plan, at least as we have heard about it up to this point, you keeping out it is not final yet. The States are supposed to come up with their plan 13 months after the final rule, so this is 2015, some time in 2016, Virginia is going to have to come up with a plan. They can't wait until 2025 when the new technologies will be viable, and there are 5 or 6 clean coal technologies looking really promising. How much greater benefit are we going to get as a society in that 5- or 6- or 7-year period that we are going to put lots of people out of business, raise the cost of electricity, and yet the technologies are almost there? I would submit the plan is flawed and that is why we need this bill.

I would also say to you, and I don't have to ask this from any legal standpoint, if one State were able to pull out of your plan under a legal theory, would that destroy your plan, yes or no?

Ms. McCABE. It would be inconsistent with the way the Clean Air Act works, and it would be disruptive.

Mr. GRIFFITH. But you understand that Laurence Tribe, when he was here to testify, I asked him about collateral estoppel on the case that I asked you about last time, where the EPA lawyers conceded that you didn't have the power under 111(d) to do this regulation, he said collateral estoppel would only work, or *res judicata* would only work for the State of New Jersey if they chose to use it. You could lose on that point. Now, I don't think you are right on 111(d) anyway. I don't think you have that authority. It is interesting, though, that this bill would say that all of these cases would have to go forward, but this Thursday, you are arguing in front of the Circuit Court of Appeals that it is premature to bring the court case that says you don't have the underlying authority. Wouldn't it be great to go ahead and get the Supreme Court to decide whether any of this regulation, final or otherwise, whether you had the authority to regulate at all under 111(d) in the existing power facilities and the electric generation units, wouldn't that be great to go ahead and get that out of the way? And why would you all want to stall that, and wouldn't this bill, if passed, encourage you all for judicial efficiency to go ahead and let's find out whether or not you have the power to do what you say you do. I don't think you do. You think you do. The Supreme Court has yet to rule. The more you delay makes this bill more practical. Your arguments on Thursday make me want to carry this bill.

Thank you very much, and I yield back.

Mr. WHITFIELD. At this time recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman.

Ms. McCabe, in light of the fact that human-caused climate change is advancing and that the impacts are going to be more and more severe over time, I have suggested to my colleagues that have

coal-fired interests that they embrace carbon sequestration, carbon capture sequestration sort of to protect their local industries. How would the implementation of CCS impact coal-fired power plants under the Clean Air Plan?

Ms. McCABE. CCS would be a technology the State could choose to build into its plan as a way of reducing carbon emissions from their coal fleet.

Mr. McNERNEY. So in a sense, it would protect their coal-fired power plants, and coal miners and go on down the line.

Ms. McCABE. That is correct.

Mr. McNERNEY. Thank you. Have you studied the discussion draft?

Ms. McCABE. Yes, I have.

Mr. McNERNEY. Do you think that carbon emissions would be reduced under the Clean Air Plan if this bill is adopted?

Ms. McCABE. I don't think it would be. I think it would all be delayed.

Mr. McNERNEY. Delayed? More than delayed, do you think it would be disrupted?

Ms. McCABE. Perhaps, yes.

Mr. McNERNEY. Have the States worked well with the EPA to develop the Clean Power—you know, under the Clean Air Act, and have they worked together well under the Clean Air Act?

Ms. McCABE. Absolutely. There has been tremendous discussion from States all across the country. We continue to have those discussions.

Mr. McNERNEY. Well, my region is the central valley of California, the northern part of that central valley. If this bill is adopted, how do you think that would affect the air quality in that region?

Ms. McCABE. Well, it would mean that States would delay, in the first instance, putting their plans together, not just California but all States would, and as States having the option to opt out of the plan altogether could certainly impact California.

Mr. McNERNEY. Thank you. FERC recently had a listening session on the Clean Power Plan. What was your takeaway from those hearings?

Ms. McCABE. Those were very interesting conversations. We very much appreciated being a part of them. I think we heard a lot of the things that we have been hearing from people in their public comments to us, which makes sense. A lot of good questions, a lot of good discussion, interest by FERC in making sure that they understand how they can be helpful to EPA as we go forward and do our job under the Clean Air Act. So I think it has served as another opportunity for people to raise their concerns, and also as a basis for ongoing conversation.

Mr. McNERNEY. So in your opinion, it was a positive conversation.

Ms. McCABE. Absolutely.

Mr. McNERNEY. Are you having those types of conversations in States about the Clean Power Plan?

Ms. McCABE. Certainly, yes.

Mr. McNERNEY. And a lot of those are productive.

Ms. McCABE. They are. They are.

Mr. MCNERNEY. Are there many that aren't productive?

Ms. MCCABE. Well, I think when States come and sit down with us, they have questions about how to go forward with this, and we are working with them on the kinds of resources that they will need, technical resources, training that they will need. There is great interest. And I recognize that there is controversy as well, but when we sit down with the environmental regulators, they are focusing in on how to make this work.

Mr. MCNERNEY. Do they share the kind of concern about economic impact we are finding here today?

Ms. MCCABE. I think everybody wants to make sure that we can implement this program just as we have implemented so many under the Clean Air Act in a way that preserves affordable and reliable electricity for this country, but also delivers the billions of dollars of benefits to the public health and welfare and to the economy of this country that, over the years through the Clean Air Act, has delivered for the American people.

Mr. MCNERNEY. So would you say that the effort to reduce sulfur dioxide emissions had a positive impact on the economy?

Ms. MCCABE. Absolutely, I would, yes.

Mr. MCNERNEY. And your opinion that this Clean Air Plan could be similar in its results?

Ms. MCCABE. And it is absolutely essential, given the threat to our country that climate change poses.

Mr. MCNERNEY. Thank you. I yield back.

Mr. WHITFIELD. At this time I recognize the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON OF OHIO. Thank you, Mr. Chairman. And, Ms. McCabe, thank you for being here with us today.

I am in favor of both gas-fired and coal-fired power to heat and cool our homes and run our businesses. I think we need both, and I think that is very clear. I see a dichotomy though, a conflict, between building block 2 and building block 1 of the proposal. In building block 2, the EPA assumes that gas plants will run far more, at a 70 percent capacity factor, in order to run coal-fired plants, far less. This will reduce the heat rate efficiency of coal-fired plants because running any plant less, and on an intermittent basis, always reduces efficiency. Anybody that understands the science and technology of coal-fired power understands that. So what this says to me is that building block 2, which calls for running coal plants less, is at odds with the goals of building block 1, which calls for improving the heat rate of coal-fired plants. You can't run coal-fired plants less, while running gas plants more, and then turn around and argue that the heat rate of coal plants should be improved. To me, this seems an obvious example of using Big Government—implementing rules that are practically impossible for an industry to meet, in this case, the coal-fired industry.

So my question to you is, did the EPA consider that the amount of switching to natural gas effectively required by this rule would require coal-fired plants to operate less, thus driving up heat rates substantially, while eliminating the heat rate at the coal units? Help me understand this conflict.

Ms. MCCABE. Well, so one thing, it is important to note that the building blocks we used were not a prescriptive formula for every

State, or for any State. It was a way of characterizing the kinds of approaches that are used that reduce carbon. And we do predict that there will continue to be base load coal-fired power plants providing power.

Mr. JOHNSON OF OHIO. OK, so I can to my other questions, let's—let me stay focused here.

Ms. MCCABE. Yes.

Mr. JOHNSON OF OHIO. Would you agree—I understand that, so it was not a prescriptive formula—

Ms. MCCABE. Yes.

Mr. JOHNSON OF OHIO [continuing]. But would you agree that requiring coal plant to run less in one section, and then mandating that it improve its heat rate efficiency in another section, that that is a dichotomy, that those 2 things are in conflict?

Ms. MCCABE. Well, I understand that when—

Mr. JOHNSON OF OHIO. I mean, you understand the technology, that is a yes or no question.

Ms. MCCABE. I do understand the technology, and it can be harder to run as efficiently when you are running less, but there—

Mr. JOHNSON OF OHIO. OK, I will take that as the answer. I personally feel that this demonstrates an extreme shortcoming of the proposal, Ms. McCabe, because what may be called flexibility is really the closure of a significant percentage of the plants that power America. Even before 111(d) takes effect, we will have huge numbers of retirements of coal-fired plants because of that intermittent, on and off again, running less situation.

It is also clear, turning back to some of the questions for the areas that some of my colleagues have addressed, that at the same time States would be developing the plans, there will be serious legal questions about the Clean Power Plan regulatory scheme. And I heard one of my colleagues ask the question earlier that the EPA, by its own track record, is unlikely to be providing timely guidance and assistance to the States, and the agency appears not to want to consider slowing down the process time. Whatever the confident assurances of the agency are, this is going to be a very messy process, and I think that everyone understands it.

So why would you not want to resolve the legal issues before you and your agency go through the work, and you put the States and the industry through all this problem? Why would you not support wanting to let the legal issues work themselves out? What is the rush to judgment on this that is in our interest before we answer the legal questions about whether or not you guys should be able to do this or not?

Ms. MCCABE. Well, first, Congressman, there is no way that the Administrator would sign a rule that she did not believe was fully within her authority. So we—

Mr. JOHNSON OF OHIO. So can you tell me that you think that there are not going to be legal challenges to this? I mean and have you guys not listened to—or have you not heard the many voices that are decrying the EPA's authority to do this?

Ms. MCCABE. We have heard many of those—

Mr. JOHNSON OF OHIO. Why wouldn't you want the courts to make that determination before—I mean you have seen your budget drop 20 percent over the last 5 years. Your staffing levels con-

tinue to come down, and you complain that you don't have enough money to do what you are supposed to do, or enough people to do what you are supposed to do. Why would you want to take on something that you might have to turn around and throw away if the courts decide you didn't have the authority to do this?

Ms. MCCABE. Because——

Mr. JOHNSON OF OHIO. I am out of time, Ms. McCabe. I am sorry. I wish I could give you time to answer that question, but that just seems like a flawed approach, and not in the best interests of hard-working Americans to spend their money this frivolously on something that we know the courts have major questions about.

Mr. Chairman, I yield back.

Mr. WHITFIELD. Yes, the gentleman's time has expired.

At this time recognize the gentlelady from North Carolina, Mrs. Ellmers, for 5 minutes.

Mrs. ELLMERS. Thank you, Mr. Chairman. And thank you, Ms. McCabe, for being with us today.

You know, I have listened to so much of the testimony and the questions, and I think this is a very well-rounded discussion that we are having. And again, you know, for me and my constituents back in North Carolina, this is obviously going to negatively impact the consumers and their utility bills. It is going to increase the cost. And I understand the issues. You know, certainly, we all want clean air, we want to do everything we can to achieve that, but I do have some specific questions. When we are talking about the litigation moving forward and, you know, you had mentioned in the budget proposal that the EPA expects a great deal of litigation, and this kind of comes up again after Mr. Johnson's testimony, you know, one, what type of litigation are you anticipating, and how long do you expect the judicial review of the initial legal challenges to take?

Ms. MCCABE. So we do expect legal challenges. EPA gets challenged on many of its rules, as you know, and it can take several years. If it goes all the way to the Supreme Court, that can add time to it. And then even after that, it could go back—if it goes to the Supreme Court, it could go back to a lower court for further proceedings.

Mrs. ELLMERS. Given that fact and, you know, obviously, we are looking at an incredible amount of time, years, in fact, you know, we are still looking at the situation and we are, you know, we are hearing from our States, and I certainly am hearing from North Carolina, how this is going to be very, very difficult as they are trying to go through the rule and address the issues. You know, there is a 1-year extension that is proposed in the rule, but that obviously is not adequate in the timeline that we are talking about. So given the fact that we know that this could, you know, litigation could move forward for years, how does the EPA plan on dealing with this issue? Will they demand that the States be required to submit their State plans, or are they going to hold back on that issue, allowing the States to see what the courts are going to do?

Ms. MCCABE. Well, Congresswoman, the judicial system already has a way of dealing with this. So as I have said, EPA gets challenged on many rules. In this administration, most of our rules

have been found to be lawful, and work has gone ahead on them. If a court finds that our legal basis is so questionable that they think that we are not likely to succeed on the merits, they can in response to a request put a judicial stay in place that would then toll the requirements, and that has happened on occasion. We don't believe that a court will find a substantial likelihood that we will not succeed.

Mrs. ELLMERS. And there again, you know, to that point, and thank you, you know, that would certainly help the situation, but it also doesn't alleviate the cost that our States are incurring. This will be an incredible cost to North Carolina, as it will all of my colleagues and the States that they represent. You know, according to the Unfunded Mandate Reform Act, the EPA is required to estimate the burden on States to develop State plans. So considering this and considering the length of time we are looking at, what does the EPA estimate will be the cost to States to prepare State plans?

Ms. MCCABE. I believe we estimated that. I don't have those numbers with me, Congresswoman, but we can get them.

Mrs. ELLMERS. OK, if you could provide that to the committee and also to my office, I would appreciate that. Thank you. And in light of the comments that have been made regarding the proposed Clean Power Act, is the EPA going to reevaluate these estimates, so moving forward, as the comments are being made, is there a process to reformulate the plan, or are we sticking to the plan until the process is through? Will you adjust and be flexible to the comments that you are receiving?

Ms. MCCABE. Absolutely, and you will see that in the final rule that we will have been responsive to many of those comments.

Mrs. ELLMERS. In my last 40 seconds that I have, I do want to go back to a question that my colleague from Illinois asked, Mr. Kinzinger. He was asking if the EPA is the only agency, and then you had also commented to one of my other colleagues that you were working with FERC, and that there were hearings with FERC. If FERC comes forward and tells you, in fact, again, going off of Mr. Kinzinger, that there is a reliability issue, that there is a national security issue with this, will the EPA take that recommendation and use that moving forward?

Ms. MCCABE. Well—

Mrs. ELLMERS. Are you required to do so?

Ms. MCCABE. We are so far away from States developing plans that anybody could make a sound judgment on reliability about. So we will do our job under the Clean Air Act. We will take into consideration any input that we get from anybody. We certainly will listen very seriously to any input that FERC wants to give us, but we are just not at a point where anybody could make that pronouncement at this point.

Mrs. ELLMERS. Thank you. Thank you, Mr. Chairman. I went over my time a little bit.

Mr. WHITFIELD. At this time I recognize the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. MULLIN. Thank you, Mr. Chairman.

Ma'am, I really almost feel for you because the way that you are sitting here having to take these questions I can tell you are just

having, you know, a blast doing it. And I am meaning that a little cynical there, but you are here and I really do appreciate that.

However, I do question the direction that the EPA is going with this. I have heard you talk about that many, many Americans believe with you and there are with you on this, but yet all the reports we keep hearing back over and over again isn't true. I mean the only many, many Americans I assume you are talking about is Sierra Club and some of our minimalists who live in the city and they don't ever live in the country, which I find quite hilarious sometimes because if you are an environmentalist, you would think you would want to live in the environment.

But besides that, you go into the fact that you are saying that you are not going to reduce the amount of energy being generated, is that right? You don't find a concern with the amount of energy being generated?

Ms. MCCABE. Well, we think there are many opportunities to employ energy efficiency that—

Mr. MULLIN. What are those opportunities because just in Oklahoma alone just in my district we are going to lose 3,000 gigawatts, which is about 70 percent of our coal-fired power plants. Southwestern Power, who represents that region there, they are saying they are going to lose 13,900 megawatts. What is going to replace that?

Ms. MCCABE. Well, I am not sure exactly what the SPP is basing all those predictions on.

Mr. MULLIN. Ma'am, these are the figures that are coming from the individuals that are providing my constituents and providing my region with power.

Ms. MCCABE. Right.

Mr. MULLIN. Now, if the EPA is doing their due diligence by understanding the research that they are putting out there and before you come in front of Congress and you start relaying these facts that you don't believe it is going to reduce power, what do you think about talking to the stakeholders? I mean these are the individuals that are responsible for providing reliability to us that when we go and we flip our switch on, it is going to work.

Ms. MCCABE. We certainly are talking with all of these entities, including—

Mr. MULLIN. So what is going to replace this?

Ms. MCCABE. It will be different kinds of generation. I can't speak to all of them—

Mr. MULLIN. What kind of generation are you going to replace it with because not all regions are the same? We don't have the same flexibility as everybody else.

Ms. MCCABE. That is right.

Mr. MULLIN. The infrastructure isn't in place yet. The EPA is moving on with this rule. I mean you are talking about saying it is not going to reduce reliability, but ma'am, the fact is it will reduce it. If we are taking that much off online, wouldn't the EPA have some type of study out there to back up what you are saying that it is not going to shut down or reduce reliability? Wouldn't you think there would be something out there that you could back up what you are bringing facts as I am assuming the rest of America

is going to believe you are backing your statements up with facts, aren't you?

Ms. McCABE. Absolutely. And—

Mr. MULLIN. So what are those facts?

Ms. McCABE. We have analysis; the Department of Energy has done various kinds of analysis.

Mr. MULLIN. What is it that you are talking about specifically? What is going to replace it?

Ms. McCABE. Well, as you have said, every State is different. Their needs and their flexibilities are different. There is—

Mr. MULLIN. But you are treating all States the same.

Ms. McCABE. No, we are not treating all States the same.

Mr. MULLIN. Really?

Ms. McCABE. No.

Mr. MULLIN. Well, you are making them all combined.

Ms. McCABE. We are setting targets for them that are based on a uniform approach across—

Mr. MULLIN. Which is a one-size-fits-all approach which is—

Ms. McCABE. It is—

Mr. MULLIN. You said a uniform approach.

Ms. McCABE. No, no, it is not one-size-fits-all.

Mr. MULLIN. Well, uniform is everybody looks the same. That is the purpose of a uniform.

Ms. McCABE. OK. Well, then I will change my word. This is not one-size-fits-all. This is an approach that takes into account the energy needs and the energy resources of every single State.

Mr. MULLIN. OK. Ma'am, we are going to agree to disagree on that one because the fact is you are talking in circles.

Now, let's go back to the thing, and as you said, that it is not going to cost the individual, the ratepayer, it is not going to raise their cost. Isn't that what you said?

Ms. McCABE. That is what our national analysis shows.

Mr. MULLIN. Where are you getting that statement? Because Southwestern Power says it is going to cost them \$2.9 billion per year to comply, \$2.9 billion per year. Now, if you understand business at all, you understand that that has to be passed through to somebody. So if it is going to cost Southwestern Power \$2.9 billion per year, who is going to pay for that?

Ms. McCABE. There are investments that everybody is making that they look at over time. Remember, we have a long period of time to implement this.

Mr. MULLIN. Who is going to pay the \$2.9 billion a year? It is not just investments. It has got to be passed on to somebody. Is the EPA going to pay that out of your budget?

Ms. McCABE. What our analysis shows and what other people look at is—

Mr. MULLIN. The analysis, ma'am, we have already proved that your analysis isn't lining up. It is an assumption. You keep calling it an analysis; it is an assumption that you are calling an analysis. The truth is the \$2.9 billion, the cost has to be passed on to somebody, and ultimately, it is going to be all of our constituents that are going to be paying for it. And it looks like to me that the EPA's analogy is, well, we know best. Just shut up and follow us. You

weren't elected, we were, and we were elected to represent our constituents.

Thank you.

Mr. WHITFIELD. The gentleman's time is expired. Is Mr. Flores around? Does anyone know?

OK. Well, I guess that concludes the questions for Ms. McCabe.

Mr. RUSH. Mr. Chairman?

Mr. WHITFIELD. Yes.

Mr. RUSH. Mr. Chairman, I just heard a number of members have questions about the EPA's analysis and somebody is suggesting that EPA didn't even have enough analysis. And I just wanted to inform the Chair and the other members that here I have in my possession I have about—this is about 10 to 12 pounds of analysis from the EPA and the regulatory impact analysis for the proposed carbon pollution guidelines for assisting power plants and emissions standards for modified and reconstructed power plants. I would be happy to move that this be included in the record. So in order to be said again and again and again that the EPA does not have an analysis and here it is. This is about 10 pounds of it and so, I don't know. I would be happy if the chairman wants or desires I would be happy to move that this get included into the record so that we can just put to rest the fact that EPA does not have an analysis.

Mr. WHITFIELD. Well, let me just say we understand the EPA has a lot of analyses and we have a lot of industries, utility companies, local communities that have analyses as well and they don't agree. So that is where we are.

Mr. RUSH. Well, Mr. Chairman, I just want to say it has been stated here so many times it is almost hurtful and harmful to keep hearing that the EPA doesn't have an analysis. Here it is, 10 to 12 pounds.

Mr. WHITFIELD. So are you moving that we put it in the record?

Mr. RUSH. I don't know, Mr. Chairman. It will take up too much—

Mr. WHITFIELD. Yes.

Mr. RUSH [continuing]. Probably take up too much paper and too much—

Mr. WHITFIELD. Well, thank you so much for bringing it to our attention.

Mr. RUSH. I want you to know that there is your analysis.

Mr. WHITFIELD. We appreciate that.

Mr. RUSH. Here it is right here.

Mr. WHITFIELD. Ms. McCabe, thank you for being with us today. We are to continue to engage you and EPA on this issue as we move forward.

At this time I would like to call up the second panel. And on the second panel, we appreciate your patience this morning. We have Mr. Eugene Trisko. I tell you what I am going to do. I want all of you to just come on up and I am going to introduce you right before you give your 5-minute opening statement.

So if you all would have a seat and then we will begin on the left with Mr. Trisko and then we will let each one of you give your 5-minute opening statement.

So our first witness this morning is Mr. Eugene Trisko, who is the energy economist and attorney on behalf of the American Coalition for Clean Coal Electricity.

And once again, thank all of you for being here. Thanks for your patience. We do value your comments and thoughts on this important issue.

So, Mr. Trisko, I am going to recognize you for 5 minutes, and you will note that there is a little box on the table, two of them. They have colors, and when it gets red, that means the 5 minutes is up. So just be aware of that. And also be sure and turn the microphone on so that all of us can hear.

And, Mr. Trisko, you are recognized for 5 minutes.

[Audio malfunction in hearing room.]

Excuse me, Mr. Trisko, would you just move the microphone a little bit closer because some of our members were having a little bit of an issue. Thank you. Is your microphone on?

STATEMENTS OF EUGENE M. TRISKO, ENERGY ECONOMIST AND ATTORNEY, ON BEHALF OF THE AMERICAN COALITION FOR CLEAN COAL ELECTRICITY; LISA D. JOHNSON, CHIEF EXECUTIVE OFFICER AND GENERAL MANAGER, SEMINOLE ELECTRIC COOPERATIVE, INC., ON BEHALF OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION; SUSAN F. TIERNEY, SENIOR ADVISOR, ANALYSIS GROUP; MELISSA A. HOFFER, CHIEF, ENERGY AND ENVIRONMENT BUREAU, OFFICE OF THE ATTORNEY GENERAL, COMMONWEALTH OF MASSACHUSETTS; KEVIN SUNDAY, MANAGER, GOVERNMENT AFFAIRS, PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY; AND PAUL N. CICIO, PRESIDENT, INDUSTRIAL ENERGY CONSUMERS OF AMERICA

STATEMENT OF EUGENE M. TRISKO

Mr. TRISKO. Will this help? Should I go back to the top? We started at good morning.

Mr. Chairman, we have analyzed consumer energy costs for 31 geographically diverse States, and these States are expected to be States that will be heavily impacted by EPA's Clean Power Plan.

The 31 State reports analyzed the pattern of energy expenditures among three categories, a pretax and after-tax household income. The studies rely on actual State residential energy expenditures in 2014 from the U.S. Department of Energy's EIA and Government surveys of residential and transportation energy consumption per household income groups. The household income data are based upon U.S. Bureau of the Census data for 2013, the most recent data available. Energy expenditures as a percentage of after-tax income are estimated for the effects of Federal and State income taxes and Federal social insurance payments using CBO tax rates and individual State income tax data.

The key findings of these studies are: first, one-half of the households in these 31 States have average pretax annual incomes below \$50,000. The median after-tax income of these 38 million households is \$23,317, equivalent to a take-home income of less than \$2,000 per month. The 50 percent of households in these 31 States with pretax incomes of \$50,000 or less spend 14 to 19 percent of

their after-tax income on residential and transportation energy with median expenditures of 17 percent.

Low-income families, those with pretax annual incomes of less than \$30,000, represent 30 percent of the households in these 31 States. Their median after-tax income is 15,464. These households spend an estimated 18 percent to 25 percent of their after-tax income on residential and transportation energy with a median expenditure of 22 percent.

Recent consumer savings at the gas pump are being eroded by steady increases in electricity prices. Residential electricity represents 76 percent of total residential energy expenditures in the 31 States on a household weighted average basis. From 2005 to 2014 residential electricity prices in the 31 States increased overall by a weighted average of 38 percent in current dollars and by 13 percent in constant 2014 dollars.

Large electric pricing increases will result with the implementation of EPA's proposed Clean Power Plan. A recent analysis by National Economic Research Associates estimates that the carbon rule will increase delivered electricity prices in the 31 States by 15 percent on average during the period 2017 to 2031. These average price increases mean that electricity prices for consumers will be 15 percent higher on average each year under the Clean Power Plan than they would be without the Clean Power Plan.

Peak year electric price increases during this period average 22 percent for the 31 States. These estimates are conservative because NERA did not consider any additional natural gas infrastructure or electric transmission investments needed to comply with EPA's proposed rule.

The U.S. Census Bureau reports that the real pretax incomes of American households have declined across all five income quintiles since 2001 measured in constant 2013 dollars. The largest percentage losses of income are in the two lowest income quintiles.

The loss of annual income among all American households averages \$3,947 per household since 2001. In comparison, DOE's current estimate of annual gasoline savings for American consumers due to lower oil prices is \$700 per household.

Declining real incomes increase the vulnerability of lower income households to energy price increases such as rising utility bills. Lower income families are more vulnerable to energy costs than higher income families because energy represents a larger portion of their household budgets. Energy costs reduce the amount of income that can be spent on food, housing, healthcare, and other basic necessities. The data presented in the 31-State report show that minorities and senior citizens are disproportionately represented among these lower income households.

Thank you for the opportunity.

[The prepared statement of Mr. Trisko follows:]

Summary of Statement of Eugene M. Trisko
 Before the Committee on Energy & Commerce
 Subcommittee on Energy and Power
 Washington, D.C.
 April 14, 2015

My statement summarizes the findings of state-level studies of the impacts of energy costs on American families prepared for the American Coalition for Clean Coal Electricity. These studies assess current consumer energy costs for households in 31 geographically-diverse states. The 31 states represent two-thirds of the nation's households, and were selected based upon the expected impacts of EPA's proposed Clean Power Plan (CPP) on state economies.

The 31 state reports analyze the pattern of energy expenditures among three categories of pre-tax and after-tax household income. The studies rely on actual state residential energy expenditures in 2014 from the U.S. Department of Energy's Energy Information Administration (DOE/EIA), and government surveys of residential and transportation energy consumption for household income groups. Household income data are based on U.S. Bureau of the Census data for 2013, the most recent available. Energy expenditures as a percentage of after-tax income are estimated after the effects of federal and state income taxes and federal social insurance payments, using CBO tax rates and individual state income tax data.

Key findings are:

- 1) One-half of the households in these 31 states have average pre-tax annual incomes below \$50,000. The median after-tax income of these 38 million households is \$23,317, equivalent to a take-home income of less than \$2,000 per month.
- 2) The 50% of households in these 31 states with pre-tax incomes of \$50,000 or less spend 14% to 19% of their after-tax income on residential and transportation energy, with median expenditures of 17%.
- 3) Low-income families, those with pre-tax annual incomes less than \$30,000, represent 30% of the households in these 31 states. Their median after-tax income is \$15,464. These households spend 18% to 25% of their after-tax income on residential and transportation energy, with a median expenditure of 22%.
- 4) Recent consumer savings at the gas pump are being eroded by steady increases in electricity prices. Residential electricity represents 76% of total residential energy expenditures in the 31 states, on a household-weighted average basis.
- 5) From 2005 to 2014, residential electricity prices in the 31 states increased overall by a weighted average of 38% in current dollars, and by 13% in constant 2014 dollars.
- 6) Large electric price increases will result with the implementation of EPA's proposed Clean Power Plan. A recent analysis by National Economic Research Associates (NERA) estimates that the carbon rule will increase delivered electricity prices in the 31 states by 15%, on average, during the period 2017 to 2031 (State Unconstrained Scenario BB1-4). These average price increases mean that electricity prices for consumers will be 15% higher, on average, each year under the Clean Power Plan than they would be without the CPP. Peak year electric price increases during this period average 22% for the 31 states. These estimates are conservative because NERA did not consider any additional natural gas infrastructure or electric transmission investments needed to comply with EPA's proposed rule.
- 7) The U.S. Census Bureau reports that the real pre-tax incomes of American households have declined across all five income quintiles since 2001, measured in constant 2013 prices. The largest percentage losses of income are in the two lowest income quintiles. The loss of annual real income among all American households averages \$3,947 since 2001. In comparison, DOE/EIA's current estimate of annual gasoline savings for American consumers due to lower oil prices is \$701 per household.
- 8) Declining real incomes increase the vulnerability of lower-income households to energy price increases such as rising utility bills. Lower-income families are more vulnerable to energy costs than higher-income families because energy represents a larger portion of their household budgets. Energy costs reduce the amount of income that can be spent on food, housing, health care, and other basic necessities. Data presented in the 31 state reports show that minorities and senior citizens are disproportionately represented among lower-income households.

Statement of Eugene M. Trisko
Before the Committee on Energy & Commerce
Subcommittee on Energy and Power
Washington, D.C.
April 14, 2015

Good morning, Chairman Whitfield, Ranking Member Rush, and members of the Subcommittee. I am Eugene Trisko, an energy economist and attorney in private practice.

I am here today to summarize the findings of state-level studies of the impacts of energy costs on American families. I have conducted household energy cost studies periodically since 2000 for the American Coalition for Clean Coal Electricity and its predecessor organizations. The studies I will summarize today assess current consumer energy costs for households in 31 geographically-diverse states.

These 31 states have 76 million households, or two-thirds of the nation's households as of 2013. The states were selected based upon the expected impacts of EPA's proposed Clean Power Plan (CPP) on state economies. These states generally produce coal or rely on coal for a substantial portion of their electric generation.

Summary of 31 State Energy Cost Studies

The 31 state studies analyze the pattern of energy expenditures among three categories of pre-tax and after-tax household income. The studies rely on

actual state residential energy expenditures in 2014 from the U.S. Department of Energy's Energy Information Administration (DOE/EIA), and government surveys of energy consumption for household income groups.

Gasoline price projections for 2015 are based on the December 2014 DOE/EIA Short-Term Energy Outlook. At that time, EIA projected an average gasoline price of \$2.60 per gallon in 2015. This estimate appears reasonable based on recent cutbacks in domestic drilling investments, and current Wall Street forecasts of future NYMEX oil prices.¹

Energy expenditures as a percentage of after-tax income are estimated after the effects of federal and state income taxes and federal social insurance payments, using CBO tax rates and individual state income tax data. Household income data are based on U.S. Bureau of the Census data for 2013, the most recent available.

Key findings from the 31 state energy cost studies are summarized in the attached Table 1. In brief:

- One-half of the households in these 31 states have average pre-tax annual incomes below \$50,000. The median² after-tax income of these 38 million households is \$23,317, equivalent to a take-home income of less than \$2,000 per month.

¹ See, www.blogs.wsj.com/moneybeat/2015/04/01/forecasters-are-finding-oil-hard-to-pin-down/. Eleven investment bank forecasts show 2016 NYMEX oil prices ranging from \$57 to \$93 per barrel.

² Median household income is the midpoint, where one-half of households have incomes above this value, and the other one-half have incomes below it.

- The 50% of households in these 31 states with pre-tax incomes of \$50,000 or less spend 14% to 19% of their after-tax income on residential and transportation energy, with median expenditures of 17%.
- Low-income families, those with pre-tax annual incomes less than \$30,000, represent 30% of the households in these 31 states. Their median after-tax income is \$15,464. These households spend 18% to 25% of their after-tax income on residential and transportation energy, with a median expenditure of 22%. Census Bureau demographic data presented in the state reports shows that minorities and senior citizens represent the majority of these low-income households.
- More affluent households with pre-tax annual incomes of \$50,000 or more represent 50% of total households in the 31 states. These households have median after-tax incomes of \$81,630. They spend 6% to 9% of their after-tax income on residential and transportation energy.
- Recent consumer savings at the gas pump are being eroded by steady increases in electricity prices. Residential electricity represents 76% of total residential energy expenditures in the 31 states, on a household weighted average basis.
- From 2005 to 2014, residential electricity prices in the 31 states increased by a weighted average of 38% in current dollars, and by 13% in constant 2014 dollars. These increases are due in part to additional capital, operating and maintenance costs associated with meeting U.S. EPA clean air and other environmental standards.
- Larger electric price increases will result with the implementation of EPA's proposed Clean Power Plan. National Economic Research Associates (NERA) estimates that the carbon rule will increase delivered electricity prices in the 31 states by 15%, on average, during the period 2017 to 2031.

These average price increases mean that electricity prices for consumers will be 15% higher, on average, each year under the Clean Power Plan than they would be without the CPP. Peak year electric price increases during this period average 22% for the 31 states (see Table 1). These estimates are for NERA's "State Unconstrained Building Blocks 1-4" scenario. The estimates are conservative because NERA did not consider any additional natural gas infrastructure or electric transmission investments needed to comply with EPA's proposed rule.

Declining Real Incomes

These substantial increases in residential energy costs should be assessed in the context of the long-term declining trend of real income among American families. The U.S. Census Bureau reports that the real pre-tax incomes of American households have declined across all five income quintiles since 2001, measured in constant 2013 prices. As shown in the table below, the largest percentage losses of income are in the two lowest income quintiles. Households in the lowest quintile lost 13% of their real income between 2001 and 2013.

Real U.S. pre-tax household incomes by income quintile,
2001-2013
(In constant 2013 \$)

	1Q	2Q	3Q	4Q	5Q	Avg.
2001	\$13,336	\$33,510	\$56,090	\$87,944	\$192,063	\$76,589
2013	\$11,651	\$30,509	\$52,322	\$83,519	\$185,206	\$72,641
% Chg.	-13%	-9%	-7%	-5%	-4%	-5%
\$ Chg.	(\$1,685)	(\$3,001)	(\$3,768)	(\$4,425)	(\$6,857)	(\$3,947)

Source: <https://www.census.gov/hhes/www/income/data/historical/household/>

The loss of annual real income among all American households averages \$3,947 since 2001. In comparison, DOE/EIA's current estimate of annual gasoline savings for American consumers in 2015 is \$701 per household,³ reflecting lower oil price expectations. These reduced gasoline expenditures would offset just 18% of the loss of real incomes by American families since 2001. Most of the savings at the gas pump are realized by higher-income consumers with multiple vehicles per household.

Impacts on Lower-Income Families

The share of household income spent for energy falls disproportionately on lower- and middle-income families earning less than \$50,000 before taxes. In the 31 state studies, households earning less than \$50,000 before taxes spend 14% to 19% of their after-tax income on residential and transportation energy. While many lower-income consumers qualify for energy assistance, Congress has pared back budgetary support for these government programs in recent years.⁴

Lower-income families are more vulnerable to energy costs than higher-income families because energy represents a larger portion of their household budgets. Energy costs reduce the amount of income that can be spent on food, housing, health care, and other basic necessities.

³ U.S. DOE/EIA, Short-Term Energy Outlook (March 2015).

⁴ Federal funding for the Low Income Home Energy Assistance Program (LIHEAP) has declined from \$4.5 billion in FY2011 to \$3.0 billion in FY2015. See, <http://www.liheapch.acf.hhs.gov/Funding/funding.htm>.

Fixed-income seniors are a growing proportion of the U.S. population, and are among the most vulnerable to energy cost increases due to their relatively low average incomes and high per capita energy use.⁵ In 2013, the median pre-tax income of 29 million households with a principal householder aged 65 or older was \$35,611, 32% below the national median household income of \$52,250.⁶ Senior citizens and other lower-income groups will bear the burden of higher energy costs imposed by EPA's Clean Power Plan, but will be among the least likely to invest in – or benefit from – the energy efficiency programs that the proposed rule envisions.

Thank you for the opportunity appear before you today. I am happy to answer any questions that the Subcommittee may have.

⁵ U.S. DOE/EIA, 2009 Residential Energy Consumption Survey (2012).

⁶ U.S. Census Bureau, Statistics of Income and Poverty in the United States: 2013 (September 2014), Table 1.

State	No of H/H's (Mil.)	Median Pre-Tax H/H Income US-\$52,250	Percent of Households With Pre-Tax Incomes		Average After-Tax Incomes of Households with Pre-Tax Incomes		Estimated Energy* Expenditures as Percent of After-Tax Incomes		Electricity Pct. of Total Residential Energy \$	Residential Electricity Current \$ Per kWh	Pct. Price Chg. 2005-14 Constant	NERA Projected EPA Carbon Rule Electricity Pct. Price Increases Peak Year
			<\$50K	>=\$50K	<\$50K	>=\$50K	<\$50K	>=\$50K				
AL	1.8	\$42,849	36%	56%	44%	\$14,758	\$22,324	\$77,339	28%	18%	44%	19%
AR	1.1	\$40,511	38%	59%	41%	\$15,228	\$22,578	\$74,422	27%	17%	48%	20%
AZ	2.4	\$48,510	31%	51%	49%	\$15,503	\$23,540	\$82,902	20%	15%	36%	15%
CA	2.0	\$58,823	25%	43%	57%	\$15,885	\$24,068	\$90,501	19%	14%	36%	19%
CO	7.2	\$46,036	32%	53%	47%	\$15,528	\$23,803	\$80,959	21%	16%	24%	18%
FL	3.6	\$47,829	32%	52%	48%	\$14,983	\$22,594	\$84,048	25%	19%	54%	20%
GA	1.2	\$52,229	27%	48%	52%	\$15,852	\$23,939	\$77,703	22%	16%	24%	23%
IL	4.8	\$56,210	27%	45%	55%	\$15,223	\$23,317	\$94,111	21%	16%	34%	25%
IN	2.5	\$47,529	31%	52%	48%	\$15,510	\$23,664	\$80,457	22%	16%	49%	15%
KS	1.3	\$50,972	29%	49%	51%	\$15,673	\$23,706	\$81,630	22%	16%	54%	18%
KY	1.7	\$43,399	35%	56%	44%	\$14,668	\$22,164	\$77,033	23%	17%	53%	34%
LA	1.7	\$44,164	36%	54%	46%	\$14,521	\$21,559	\$82,643	23%	17%	53%	25%
MD	2.2	\$73,150	20%	34%	66%	\$15,107	\$23,308	\$95,640	25%	18%	71%	18%
MI	3.8	\$48,273	31%	52%	48%	\$15,273	\$23,225	\$82,127	23%	17%	63%	15%
MN	2.1	\$60,702	24%	41%	59%	\$15,648	\$23,097	\$83,970	22%	16%	47%	20%
MO	2.4	\$46,931	32%	53%	47%	\$15,464	\$23,161	\$78,341	23%	17%	52%	13%
MS	1.1	\$37,963	40%	60%	40%	\$14,494	\$21,508	\$74,329	25%	19%	30%	22%
MT	0.4	\$46,972	33%	53%	47%	\$15,413	\$22,881	\$77,920	21%	16%	70%	17%
NC	3.8	\$45,906	33%	54%	46%	\$15,527	\$23,120	\$81,185	22%	17%	81%	16%
ND	0.3	\$55,759	26%	45%	55%	\$15,811	\$24,145	\$86,331	22%	16%	29%	9%
NE	0.7	\$51,400	28%	48%	52%	\$16,000	\$24,089	\$78,235	22%	16%	33%	14%
NM	0.8	\$43,872	36%	55%	45%	\$14,971	\$22,388	\$79,822	20%	15%	46%	19%
NH	4.6	\$48,081	26%	52%	48%	\$14,747	\$24,205	\$79,989	23%	17%	45%	19%
OK	1.4	\$45,690	33%	54%	46%	\$15,420	\$23,234	\$78,686	22%	17%	45%	22%
OH	4.9	\$52,007	29%	48%	52%	\$15,318	\$23,109	\$86,581	22%	17%	36%	13%
PA	2.5	\$44,297	34%	55%	45%	\$15,605	\$23,590	\$85,382	22%	17%	49%	18%
TN	9.1	\$51,704	29%	48%	52%	\$15,761	\$24,069	\$95,815	22%	17%	70%	17%
TX	0.9	\$59,770	23%	40%	60%	\$16,087	\$24,486	\$82,482	18%	14%	7%	20%
UT	3.0	\$62,666	23%	40%	60%	\$15,554	\$23,802	\$95,336	23%	17%	35%	16%
VA	0.7	\$41,253	37%	58%	42%	\$14,970	\$22,392	\$75,371	23%	17%	50%	14%
WV	0.2	\$58,752	25%	43%	57%	\$16,480	\$25,024	\$85,198	20%	15%	39%	26%
TOTAL	76.1	\$49,571	30%	50%	50%	\$15,464	\$23,317	\$81,630	22%	17%	38%	22%
WGT AVG		\$48,081				\$15,464	\$23,317	\$81,630				

*Energy expenditures include residential energy and transportation (gasoline).

Sources: Household energy expenditures are based on DOE/EIA state data for 2014 electricity, natural gas, LPG, heating oil and other residential fuels, allocated by income category with expenditure allocations from the DOE/EIA 2009 Residential Energy Consumption Survey (2012), consumer expenditures for motor gasoline are based on gasoline consumption per household by region and income category reported in the 2001 U.S. DOT National Household Travel Survey (2005), adjusted for a 17% decrease in household-adjusted retail gasoline sales from 2001 to 2014, with DOE/EIA's December 2014 projection of a \$2.60/gallon average gasoline price in 2015. The distribution of households by pre-tax income category is from U.S. Bureau of the Census, American Fact Finder (2014). Federal and state tax rates are based on CBO estimates of average effective federal tax rates including social insurance payments and state tax data from the Tax Foundation. Historic state electricity price data are from DOE/EIA Electric Power Monthly (Dec. 2014), adjusted to constant dollars by the CPI.

NERA estimates of delivered electricity price increases from implementation of the proposed EPA Clean Power Plan are from NERA, "Potential Energy Impacts of the EPA Proposed Clean Power Plan," (October 2014), prepared for the American Coalition for Clean Coal Electricity, et al.; Price impacts are presented for State Unconstrained Scenario B6 1-4.

Mr. WHITFIELD. Mr. Trisko, thank you.

And our next witness is Ms. Lisa Johnson, who is the CEO and general manager of the Seminole Electric Cooperative, on behalf of the National Rural Electric Cooperative Association. And your headquarters is in where?

Ms. JOHNSON. Tampa, Florida.

Mr. WHITFIELD. In Tampa, OK.

You are recognized for 5 minutes, and just be sure the microphone is on.

STATEMENT OF LISA D. JOHNSON

Ms. JOHNSON. Thank you, Mr. Chairman, Ranking Member Rush, and members of the committee. I appreciate the invitation to address the challenges facing electric cooperatives as we work to comply with EPA regulations.

My name is Lisa Johnson. I am the CEO of Seminole Electric Cooperative, and I am also testifying on behalf of the National Rural Electric Cooperative Association.

I applaud this committee's willingness to examine complex issues such as 111(d) regulations and work toward an equitable solution. While everyone can agree on the importance of environmental stewardship, regulations that would eliminate whole industries, drastically raise electric rates, and call into question the reliability of our Nation's transmission grid are excessive and unnecessary.

I am here today to express support for Chairman Whitfield's discussion draft, the Ratepayer Protection Act. This act would delay the Clean Power Plan to ensure that it survives legal challenge before taking effect and provide States like Florida with an important safety valve for consumers and for the reliability of the grid.

Seminole Electric Cooperative, through our nine-member, not-for-profit, consumer-owned electric cooperatives, serves more than 1.4 million individuals and businesses in 42 of Florida's 67 counties. The residential customers our members serve are predominantly rural. Approximately one-third have household incomes below the poverty level and more than 75 percent have household incomes less than \$75,000.

Seminole employs more than 500 individuals at three locations in Florida: our headquarters in Tampa; the Seminole Generating Station or SGS, a 1,300 megawatt coal-fired power plant located in northeast Florida; and the Midulla Generating Station, or MGS, an 810 megawatt natural gas-fired power plant located in south central Florida.

SGS employs more than 300 individuals and provides more than 50 percent of the energy used by our members. Under the proposed Clean Power Plan SGS would close by 2020 despite being one of the cleanest coal plants in the country, despite Seminole's environmental investments of more than \$530 million, and despite having a professionally rated useful life that carries into 2045.

Worse, the financing structure for SGS carries through 2042. If the plant closes in 2020 our members will continue to pay for it in addition to paying for replacement generation.

SGS is the bedrock of rural Putnam County. In addition to our hardworking employees, there often hundreds of contractors on-site. On March 11 there were 732 contractors at SGS addressing

work during our spring maintenance outage. These contractors stay in local hotels, eat at local restaurants and shop at local retailers.

Seminole is also the largest taxpayer in Putnam County paying more than \$5 million in property taxes in both 2013 and 2014. Rural Putnam County and the city of Palatka cannot afford to lose SGS or any of the associated jobs, especially by 2020. Closing SGS prematurely would call into question our ability to generate and transmit electricity to our members. In 2014 more than 50 percent of our members' energy requirements were served via SGS. Seminole does not have sufficient natural gas facilities to serve this load adequately without our coal units.

And Seminole will not be the only utility in need of new sources of electricity. EPA's own model calls for the closure of more than 90 percent of Florida's coal-fired units. Florida's existing transmission constraints both in and out of State and EPA's short compliance timeline will prevent us from purchasing or building this power economically if it is feasible at all.

The only viable option to replace SGS is natural gas. Florida is already 65 percent dependent on natural gas for generation and the likely effect of the Clean Power Plan is that this percentage will soar 85 percent. This overreliance on one fuel source exposes us to the price fluctuations and volatility common in the gas markets.

The new gas-fired-generating facilities, transmission infrastructure, and pipelines needed to replace the output of just SGS cannot be permitted and completed by 2020 even if we started today. If the Clean Power Plan takes effect before the construction of sufficient generation or transmission infrastructure, significant power deficiencies may occur, harming reliability.

The Clean Power Plan has failed to recognize the economic impacts it would have on Seminole, our employees, our member cooperatives, and the communities we support. It is also failed to present a proposal that would maintain reliable electric service for our members and for Florida in general. As such, Seminole supports the Ratepayer Protection Act and urges this committee to continue its work to protect consumers.

The best result for Seminole is for EPA to withdraw its proposal. In the absence of that, this legislation will protect Florida and Seminole by ensuring we do not have to comply with regulations that may be unlawful or may seriously harm consumers.

A lot of us take it for granted that when we flip a switch, the lights come on. The Clean Power Plan as proposed will call that into question.

Thank you.

[The prepared statement of Ms. Johnson follows:]

TESTIMONY OF SEMINOLE ELECTRIC COOPERATIVE, INC.

PRESENTED BY LISA D. JOHNSON

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER
HEARING ON THE "RATEPAYER PROTECTION ACT"

APRIL 14TH, 2015

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1. EXECUTIVE SUMMARY OF WRITTEN TESTIMONY

Seminole Electric Cooperative ("Seminole") is a not-for-profit generation and transmission ("G&T") cooperative, serving approximately 1.4 million people and businesses in Florida via nine Member distribution electric cooperatives ("Members"). Seminole and its Members provide essential electric service in primarily rural areas of Florida stretching from west of Tallahassee to south of Lake Okeechobee, through a combination of coal- and gas-fired generation assets and power purchase agreements. Seminole has significant concerns about the legal and technical validity of the Environmental Protection Agency's ("EPA") Existing-Source Proposal, termed the Clean Power Plan ("CPP"), and the proposal's substantial impacts on Seminole, its Members, and their consumers, Florida's electric system, and the citizens of Florida. We believe that Chairman Whitfield's "Ratepayer Protection Act" will provide both Seminole, and the State of Florida, with significant protections against massive rate hikes and damage to the reliability of Florida's grid due to EPA's CPP.

EPA's own modeling projects that more than 90 percent of Florida's coal-fired generation would be forced to prematurely retire in order to achieve Florida's goal, a 38 percent reduction in greenhouse gases ("GHG"), specifically carbon

dioxide ("CO₂"). This includes Seminole's 1,300 megawatt ("MW") coal-fired facility. Serious fuel diversity, reliability, and cost concerns would result if, as EPA projects, natural gas-fired combined-cycle ("NGCC") units are required to produce more than 85 percent of Florida's electricity in 2025, and coal-fired units less than 2 percent. The truth is that Florida cannot comply with EPA's proposal using its existing utility investments, and the overall utility cost impacts would likely total in the billions - and perhaps tens of billions - of dollars. Moreover, Florida is disproportionately impacted. Florida's goal is more than twice that of several other states and more than 25 percent above the national average. EPA's goals also penalize Florida for its already-significant percentage of gas-fired generation.

Seminole, in particular, would suffer substantial harm as a result of EPA's proposal, a reality that EPA has failed to, but must, address. EPA projects that Seminole would lose at least 20 years of remaining useful life of its coal-fired units, and operate its gas-fired facility at a substantially reduced capacity; the cost of these losses, in addition to the cost of replacement generation, would be borne by its Members and their consumers. EPA also does not recognize Florida's unique characteristics, such as its peninsular geography and

accompanying transmission constraints, reliability concerns from over-reliance on a single fuel, limited options for renewable power, and its existing statutory and regulatory framework. EPA must take these important factors into account and correct the numerous flaws in its proposal.

Regarding legal flaws, there is serious doubt if EPA has the authority to issue ANY proposal regulating GHGs from existing electricity generating units ("EGUs"). Even assuming such authority, EPA's proposal contains numerous other legal flaws, such as EPA's lack of authority to set national energy policy, its usurpation of state authority, its regulation of entities outside-the-fence, its arbitrary deadlines, and its failure to provide states with a meaningful opportunity to consider an EGU's remaining useful life.

EPA's proposal also contains numerous technical flaws, such as the reliance on inaccurate data and false assumptions in its Building Blocks, goal calculations, and compliance modeling. For example, in Building Block 1, EPA's 6 percent heat-rate improvement assumption is clearly erroneous, especially for units like Seminole's, which have already maximized heat rate. In Building Block 2, EPA failed to address the feasibility of increasing NGCC capacity to 70 percent, including whether

sufficient natural gas is available on a national, regional, state or local level, whether there is adequate gas-pipeline infrastructure, whether there is adequate transmission infrastructure, and what impacts such a shift will have on fuel diversity and reliability. In Building Block 3, EPA misinterpreted and inappropriately applied the renewable portfolio standard of a single state to the entire southeast region, including Florida. Moreover, in Building Block 4, EPA failed to recognize that consumer behavior determines how demand-side energy efficiency programs will be implemented.

Accordingly, Seminole has requested that EPA withdraw its proposal, revise its Building Blocks as legally and technically required, and correct its inaccurate data and false assumptions before it takes any further steps to promulgate this rule.

Should the EPA fail to withdraw, or significantly revise, its proposal, Seminole believes that Chairman Whitfield's "Ratepayer Protection Act" would protect Seminole, our Member cooperatives, and the State of Florida from suffering irreparable harm economically and to the reliability of our grid. First, the Act would prevent Seminole from expending considerable time, effort, and capital on complying with

regulations that may eventually be invalidated by the courts.

Second, the bill would provide that:

No State shall be required to adopt or submit a State plan, and no State or entity within a State shall become subject to a Federal plan . . . if the Governor of such State makes a determination, and notifies the Administrator of the Environmental Protection Agency, that implementation of the State or Federal plan would . . . have a significant adverse effect on the State's residential, commercial, or industrial ratepayers . . . or . . . have a significant adverse effect on the reliability of the State's electricity system.

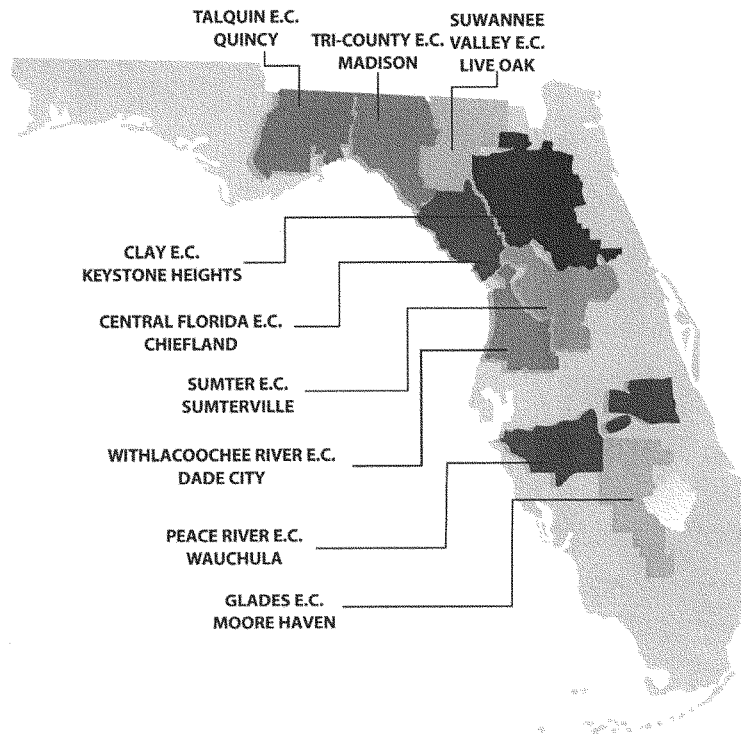
Seminole, the Florida Electric Power Coordinating Group (a group consisting of Florida investor-owned electric utilities, rural electric cooperatives, and municipal electric utilities), Florida's Public Service Commission, the Florida Office of Public Counsel, the Florida Department of Agriculture, the Florida Department of Environmental Protection, and the Florida Electric Cooperative Association have all determined that the CPP as proposed would have significant adverse effects on both ratepayers and the reliability of Florida's electrical system. As such, we welcome the protections of the "Ratepayer Protection Act" and look forward to its swift passage.

2. SEMINOLE'S COOPERATIVE SYSTEM**a. Introduction**

Seminole is one of the largest, not-for-profit, generation and transmission cooperatives in the country. Seminole was founded in 1948, under the Rural Electric Administration's Electric Cooperative Corporation Act, and became fully operational as a G&T in 1976. Seminole strives to provide reliable, competitively priced, wholesale electric power to its nine Member distribution electric cooperatives. Seminole's Members include:

- Central Florida Electric Cooperative
- Clay Electric Cooperative
- Glades Electric Cooperative
- Peace River Electric Cooperative
- Sumter Electric Cooperative
- Suwannee Valley Electric Cooperative
- Talquin Electric Cooperative
- Tri-County Electric Cooperative
- Withlacoochee River Electric Cooperative

Seminole's Member Cooperatives



Collectively, Seminole's Members serve an average of 14 consumers per mile of line - although this number varies considerably across the state depending on growth and location. For comparison purposes, in Florida, investor-owned utilities typically serve an average of 57 consumers per mile. Nationally, the average is 34 consumers per mile for investor-owned utilities and 48 for municipalities. This is significant, as electric cooperatives must maintain the same utility infrastructure as investor-owned utilities and municipals with fewer consumers to share the associated costs, and in areas where for-profit utilities were unwilling or unable to extend service.

Seminole is also greatly concerned about the economic impact the rule will have on its Members' consumers, a factor that EPA must take into consideration. Based on a 2011 survey, the residential customers Seminole's Members serve are predominantly rural, approximately one-third of which have household incomes below the poverty level. More than 75 percent have household incomes less than \$75,000. Lower-income households spend a substantially higher percentage of their income on electricity usage. Accordingly, any change in rates as a result of EPA's proposal will impact them disproportionately.

Seminole's primary generation resources include the Seminole Generating Station ("SGS") in northeast Florida, and the Richard J. Midulla Generating Station ("MGS") in south central Florida. Seminole also maintains a suite of purchase power agreements to meet demand.

b. Seminole Generating Station (SGS)

In 1978, Congress enacted the Powerplant and Industrial Fuel Use Act, which restricted new power plants from using oil or natural gas for power generation and encouraged the use of coal. This was the same time that Seminole was developing plans to build a generating facility to meet its Members' demand. Seminole decided to build a coal-fired plant because it did not have another viable option. EPA issued Seminole a prevention of significant deterioration ("PSD") permit in 1979 to construct and operate SGS in Putnam County, near the St. John's River, south of Jacksonville, and it began commercial operation in 1984.

SGS consists of two, 650-MW coal-fired generating units. In 2014, Seminole generated more than 50 percent of the energy its Members needed from these coal-fired units. In past years, the portion of energy provided to the Members from SGS has been even higher. Throughout the past 17 years, SGS has had an average

capacity factor of 80 percent. In short, this efficient, clean, coal-fired power plant has been and continues to be the primary work-horse in Seminole's system, and it is capable of continuing to serve in this capacity for many years to come.

SGS employs approximately 300 hard-working Floridians in rural Putnam County. By comparison, MGS employs approximately 30. Should the EPA's CPP be finalized, Seminole's coal-fired power plant will be forced to close - leaving those 300 skilled employees without a job. Additionally, SGS relies on hundreds of skilled contractors to assist during maintenance outages and capital project implementation. For example, in 2012 SGS had more than 650 contractor personnel onsite at one time to assist during a maintenance outage. For 2013, contractor personnel exceeded 550, and during the 2014 spring outage, SGS had more than 400 contractor personnel onsite. On March 11th of this year, SGS had 732 contractors on site. All of these contractor personnel jobs will no longer be needed should the plant close early. SGS also has a long-standing working relationship with an adjacent wallboard facility, Continental Building Products ("Continental"), which converts the byproduct from an SGS environmental control system into wallboard. Continental employs approximately 100 employees and depends on the coal-based byproduct for wallboard production. Without coal and access to

this byproduct, jobs at Continental will also be lost in this rural community.

Putnam County has been designated as both a State Rural Enterprise Zone and a Rural Area of Critical Economic Concern. Portions of Putnam County are within a Federal Historically Underutilized Business Zone. As such, this is not an area in rural Florida that can afford to lose nearly 400 jobs directly, and hundreds more indirectly, as a result of EPA's regulation. To place even greater emphasis on this issue, Seminole is also the largest taxpayer in Putnam County. Seminole paid more than \$5 million in property taxes in both 2013 and 2014. Putnam County cannot afford to lose Seminole's coal-fired power plant or any of the jobs associated with the facility.

i. Significant Investments in Environmental Controls

When constructed and brought online in 1984, SGS was outfitted with advanced environmental controls -- electrostatic precipitators and wet limestone flue gas desulfurization ("FGD"). Seminole has invested more than \$530 million in state-of-the-art environmental control technology at SGS. In 2005, as a result of EPA's Clean Air Interstate Rule ("CAIR"), Seminole began evaluating additional strategies to reduce emissions of sulfur dioxide ("SO₂") and nitrogen oxide ("NO_x") to the levels

required under the new rule by 2009. Various system modifications and allowance purchasing strategies were evaluated for compliance. Beginning in 2006, Seminole spent \$177.2 million to install selective catalytic reduction ("SCR") systems on both Units 1 and 2 at SGS. These additions included new structural steel, ductwork, catalyst reactors, new induced draft fans and motors, new auxiliary transformers, and the installation of steam coil air heaters. In 2011, Seminole spent an additional \$4.6 million to install the third layer of its SCR catalyst. In 2014, Seminole continued to invest in the excellent performance of the SCR system by replacing the middle layer of catalyst in Unit 2 at a cost of \$2 million. A similar project with similar cost is planned for Unit 1 in the Spring of 2015.

In order to control a secondary reaction of the SCR system, Seminole also installed a \$9.9 million sulfur trioxide ("SO₃") removal system. This system injects hydrated lime into the flue gas in order to prevent the formation of sulfuric acid. Seminole has plans to further invest in upgrading this system in 2015. In order to further reduce SO₂ emissions, Seminole upgraded its FGD system at a cost of \$68.7 million. Seminole has also installed low-NO_x burners to minimize excess air firing. In total, Seminole has invested more than \$262.4 million since 2006 installing emissions control equipment to comply with EPA

requirements (primarily CAIR), and more than \$530 million on emissions control equipment since SGS was placed in-service. In summary, Seminole has invested and continues to invest in maintaining excellent environmental quality control systems at SGS.

These investments, while necessary to comply with regulations, have caused electricity rates to rise. As stated above, Seminole is a not-for-profit cooperative, and its costs are directly reflected in its rates. Further, interest on debt, greater operation and maintenance expenses, and parasitic loads all contribute to higher costs to the Members' consumers. If SGS were to be decommissioned prior to the end of its useful life, the net book value will have to be retired, written off, and collected from our Members, along with the interest expense on debt that was borrowed to match the expected useful life.

ii. Outstanding Debt Owed

Seminole, as a rural generation and transmission cooperative, has primarily relied on capital borrowed from the Federal Financing Bank and loan guarantees from the Rural Utilities Service ("RUS") for the construction of its generation fleet and capital improvements to its facilities, primarily involving environmental controls. Currently, loans related to

SGS account for more than 75 percent of Seminole's total outstanding debt. These loans are secured by Seminole's Trust Indenture. If SGS were to be retired prior to the end of its useful life in order to comply with EPA's CPP, the debt service related to these loans would continue to impact the electricity rates paid by our Members. Most of Seminole's loans also contain significant prepayment interest penalties, so a strategy to prepay the debt would only further increase the cost paid by our Members.

iii. Remaining Useful Life

EPA declares that states are free to consider the remaining useful life of a unit in establishing the state standards. Of course, the Clean Air Act ("CAA") expressly allows for such consideration. But EPA's approach of imposing very strict state goals negates a state's ability to consider meaningfully the remaining useful life of a particular unit; EPA provides only faux flexibility. As noted below, EPA's Integrated Planning Model ("IPM") projects that 91 percent of Florida's coal-fired capacity will retire by 2025, including SGS Units 1 and 2. This is far short of SGS' remaining useful life. In 2004 and 2005, Seminole commissioned Burns and McDonnell to prepare life appraisal reports for SGS Unit 1, SGS Unit 2, and common facilities.

In the reports, Burns and McDonnell indicated that based on their review and Seminole's continued positive operational and maintenance practices, SGS should realize a remaining useful life of 40 years, through 2045. This date corresponds to the end of the Seminole's Wholesale Power Contracts with its Members, and also covers the last loan related to emission control equipment at SGS, which matures in 2042.

If SGS were retired prior to the end of its useful life, the remaining net book value (stranded asset) would be required to be written off and the expense would be paid by our Members. The Members would continue to pay the fixed costs related to SGS without receiving any energy or capacity from its operation. Seminole will still have to serve the full requirements of our Members, and the replacement capacity related to the early retirement of SGS will either have to be constructed or purchased. This will cause our Members to pay for both the stranded asset and the replacement capacity at the same time.

c. Midulla Generating Station (MGS)

MGS is an 810-MW facility located in Hardee County that uses natural gas as its primary fuel. The facility consists of a 500-MW combined-cycle unit, which began commercial operation in

2002, and 310 MW of peaking capacity, which Seminole added in 2006. The combined-cycle unit has historically operated at a capacity factor between 50-70 percent. The peaking units consist of five, Pratt & Whitney aeroderivative FT-8 Twin-Pacs, and have historically been utilized at a capacity factor of less than 11 percent. Each Twin-Pac, in fact, is limited to 2,500 hours of operation per year - 2,000 hours on natural gas and 500 on oil - by express condition of its Title V permit. Accordingly, these peaking units are not subject to EPA's proposal.

d. Power Purchase Agreements / Renewable Energy Portfolio

Seminole works to maintain a balanced and diversified generation portfolio that includes SGS and MGS, as well as capacity and energy provided through short-, medium-, and long-term purchased power agreements ("PPAs") with other utilities, independent power producers, and government entities. These resources reflect a mix of technologies and fuel types, including one of the state's largest renewable energy portfolios, although Seminole sells a portion of the renewable energy credits ("RECs") associated with its renewable generation to third parties, which can use the RECs to meet mandatory or voluntary renewable requirements. The specific amount of generation Seminole purchases from PPAs varies year to year, but on average, PPAs account for around 25 percent of our total

resources. The balance and diversity in Seminole's generation and PPA mix reduces exposure to changing market conditions, helping keep rates competitive. Fuel diversity is also of paramount importance for Seminole and Florida due to its unique geographic location and already-heavy reliance on out-of-state natural gas supplies.

Seminole has had a specific policy in place for years to acquire additional renewable resources, either through ownership or PPAs. Specifically, Seminole's Board Policy No. 308 expresses its commitment to develop and utilize renewable energy resources, particularly where cost-effective. This has resulted in Seminole entering into numerous PPAs for renewable generation. Accordingly, the reasonably available and cost-effective renewable options in Florida are already being utilized, and EPA's assumption that Florida can do substantially more is erroneous.

e. Seminole's Transmission System

Seminole owns more than 350 circuit miles of transmission that interconnect Seminole's electric generating plants with Florida's transmission grid. Seminole also relies on third party transmission providers to reliably deliver electricity to our Members. Grid reliability, as a result of re-dispatching

existing NGCC facilities to maintain an average 70 percent capacity factor, as anticipated in EPA's Building Block 2, is of great concern to Seminole. In 2014, 58 percent of Seminole's energy requirement was served via our owned coal-fired facilities and generator tie lines to the Florida grid. Seminole does not have sufficient owned or contracted NGCC facilities or transmission facilities to adequately serve load without our coal-fired units. Florida's transmission grid is congested, as described further below, and it is unlikely that Seminole would be able to obtain PPAs or construct new NGCC facilities without creating additional transmission constraints.

Regional studies performed to evaluate the dispatch of natural gas-fired plants versus coal in an uneconomic fashion resulted in severe transmission congestion throughout the Florida Region. The bulk transmission system was designed around baseload coal generation. Dispatching out of economics (such as making today's intermediate-class units run at baseload) would cause power swings to flow across transmission lines/corridors that were not designed to transport baseload generation. In addition, Seminole's experience in trying to contract with third parties via purchase power transactions from existing generating facilities has shown on multiple occasions that the existing

transmission system interconnected to these respective facilities is congested, and it is not economically feasible.

With the exception of a limited amount of electricity that can be transported into the state (2,800 MW firm), Florida is essentially an island that relies on generating units within the state to serve approximately 52,000 MW of load. If the proposed rule were to take effect prior to sufficient generation or transmission infrastructure being constructed, significant reactive deficiencies may also occur throughout the state resulting in the possibility of depressed system voltages and voltage stability concerns during normal (steady-state) conditions and contingency events.

EPA has failed to assess transmission reliability impacts in Florida, including the total reactive power deficiency. Florida must have sufficient time to evaluate and model the reliability impacts due to the loss of generating capacity, which includes a review of the impact on complying with North American Electric Reliability Corporation ("NERC") Reliability Standards.

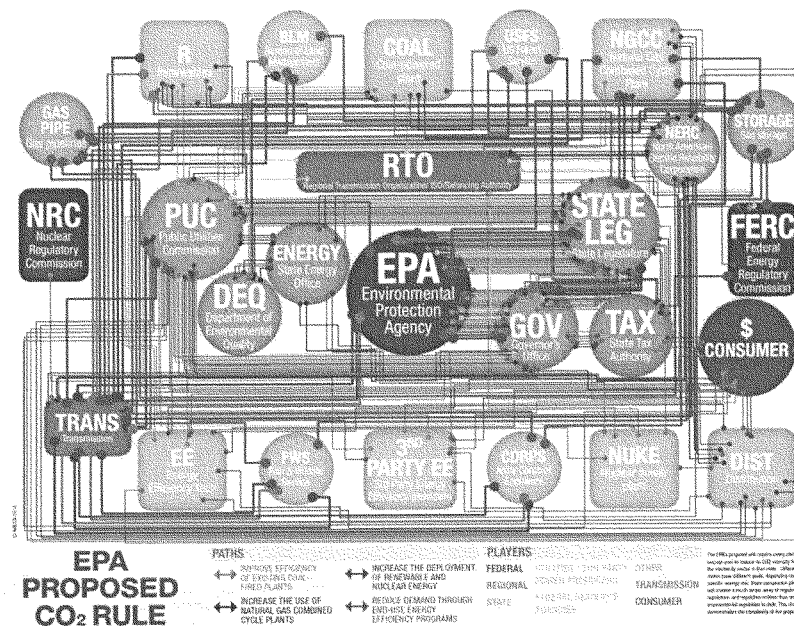
3. THE "RATEPAYER PROTECTION ACT" WOULD PROTECT OUR MEMBERS

Sub-Committee Chairman Whitfield's "Ratepayer Protection Act" would protect Seminole's Members by ensuring that we do not have to expend considerable time, effort, and capital on complying with regulations that may eventually be invalidated by the courts. Second, the bill would provide that no state shall be required to implement a state or federal plan that the state's governor, in consultation with other relevant state officials, determines would have a significant adverse effect on (i) retail, commercial, or industrial ratepayers; or (ii) the reliability of the state's electricity system.

a. The CPP may not survive legal challenge

EPA's proposal contains fundamental legal problems. In sum, there is serious doubt whether EPA has the authority to issue ANY proposal regulating GHGs from existing EGUs. Briefing is already underway in the D.C. Circuit Court, and oral arguments are scheduled for April 16th, regarding the plain language of CAA Section 111(d), which precludes EPA from promulgating rules for existing EGUs under Section 111(d) when EPA has already issued a regulation covering EGUs under Section 112. If this is not a sufficient prohibition, the CAA further precludes EPA from issuing a rule for existing sources under 111(d) until it has issued a valid rule for new sources. There are serious legal

questions regarding the validity of such rules, if EPA finalizes the rule in its current form. Furthermore, EPA itself has stated that 111(d) rules are only appropriate for specialized types of units that emit discrete types of pollutants; they are NOT appropriate for pollutant emissions from diverse and numerous sources, such as GHGs, and CO₂ specifically. See 40 Fed. Reg. 53340 (Nov. 17, 1975). The regulatory web the CPP weaves is on questionable legal ground.



b. The CPP would have a significant adverse effect

In Florida, the CPP as proposed, would have a "significant adverse effect on both retail, commercial, or industrial ratepayers; and the reliability of the state's electricity system." In written testimony provided to this committee for a March 17 hearing, Art Graham, the Chairman of the Florida Public Service Commission, stated, "Consequently, representation of potential increases of 25-50% in some retail electric rates is a credible estimate of the level of Florida's Clean Power Plan costs." Taking into account these significant rate increases, and concerns with reliability, the "Ratepayer Protection Act" would allow the Governor of Florida to delay the implementation of the plan to the benefit of Florida consumers.

i. The CPP would negatively impact Seminole

EPA's IPM compliance model predicts that Seminole's coal-fired power plant, SGS, would be forced to shut down under EPA's proposal. These two coal units were constructed in the early 1980's in response to federal laws that prohibited the use of natural gas to generate electricity. The units were also constructed to fulfill the legal obligation of Seminole and its Members to provide electricity to their Member consumers in Florida. Electricity from SGS is used by Seminole's Members to fulfill their legal obligation to serve Member consumers within

the distribution cooperative's established service territories. SGS is a significant asset that is relied upon by Seminole and its Members to fulfill that obligation, and SGS has significant economic value remaining. If, as predicted, EPA's proposal forces SGS to completely shut down before its useful life has run, Seminole's enormous, undepreciated investment in SGS will be rendered worthless. That result will leave Seminole and its Members with a "stranded asset", with significant remaining economic value and debt. Seminole and its Members arguably will be legally entitled to recover the costs incurred under this proposed government regulation. Further, EPA's IPM modeling and its economic impact analysis fail to account for the real costs of "stranded assets" such as SGS that will directly result from EPA's proposal or to consider the impact of those "stranded assets" on the electricity generating industry in general, electrical transmission reliability, and on the future cost of electricity.

EPA's proposal would have a devastating economic impact on Seminole. As noted in Section 3, forcing SGS to completely shut down, as EPA predicts will happen under its analysis of its proposal, would eliminate all economically viable use of Seminole's assets at SGS. While the land upon which SGS was built may retain a nominal value, the hundreds of millions of

dollars Seminole invested into SGS, and has not yet recovered, would be completely lost; a result that undoubtedly constitutes a severe economic impact to Seminole and its Members.

In addition to stripping Seminole of all economically-viable use of its SGS property, the proposal also appears to completely eliminate Seminole's distinct investment-backed expectations in SGS. As previously discussed, Seminole built SGS in 1984, pursuant to the requirements of the federal Powerplant and Industrial Fuel Use Act of 1978, which restricted new power plants from using oil or natural gas and encouraged the use of coal. SGS was built as a coal-fired power plant because the federal regulatory environment of 1984 left Seminole with no other viable fuel options to meet its legal obligation to serve its customers. At a time when the government encouraged the use of coal, and prohibited the use of oil and natural gas, Seminole reasonably expected that its coal-fired power generation at SGS would not be regulated out of the market (by the very government that required it to build a coal-fired plant) during its useful life. Based on the regulatory environment of 1984, EPA's 2014 CPP was completely unforeseeable. Seminole relied on the federal government's directive to construct coal units, and spent hundreds of millions of dollars since then complying with subsequent environmental rules.

**ii. The CPP would negatively impact Florida by
eliminating fuel diversity**

The following pages contain two maps. The first shows the location of the 30 coal-fired generating units in Florida today, and the second shows the only three units that would remain if the CPP were adopted as proposed. EPA's proposal assumes adequate natural gas supply is available to replace these retiring coal units with gas-fired electric generation. This assumption does not account for fuel supply risks associated with the production, processing, storage and transportation of natural gas supply to power plants in peninsular Florida.

Unlike solid fuel (coal) and liquid fuel (oil), natural gas is not easily stored due to its physical characteristics that require significantly more volume per unit of energy stored. Natural gas storage facilities must also possess specific characteristics to safely and economically store a material amount of fuel for use during periods of supply disruption.

All of the natural gas consumed by EGUs in Florida is produced outside the state and imported via one of the interstate gas pipelines. Historically, the vast majority of the gas supply transported into Florida was produced along the gulf

coast (Alabama, Mississippi, Louisiana, Texas) from shallow and deep-water offshore platforms. Offshore natural gas production has declined in recent years and onshore, unconventional gas production is making up an increasingly large percentage of the supply transported into Florida. This supply originates from production regions even further away from the state (Oklahoma, Arkansas, north Louisiana, and south Texas) and is dependent on multiple interstate pipelines in order to reach Florida. Florida's increased reliance on the 'upstream' pipeline network creates a new form of risk for the state that is not addressed by EPA's proposal and one that would be exacerbated with the removal of coal and oil-fired generation and the associated storable nature of their respective fuels within the state.

Currently, Seminole holds enough firm gas transportation capacity to dispatch its existing owned and tolled (purchased power) NGCC facilities at a 70 percent capacity factor, however; this will reduce Seminole's available gas transportation capacity for use in simple cycle gas facilities during periods of peak demand. Should Seminole be responsible for constructing NGCC generation capacity to replace its coal-fired facilities and operate those at a 70 percent capacity factor, Seminole will need a minimum of 150,000 decatherms per day ("Dths/day") of incremental firm gas transportation capacity to meet this need.

To put that into perspective, the Gulfstream Natural Gas System pipeline is fully subscribed and the Florida Gas Transmission ("FGT") pipeline has varying volumes of unsubscribed capacity posted on its website as of March 19, 2015. These range from 0 Dths/day in summer 2016 to approximately 110,000 Dths/day during the 2017-2021 period. Beginning November 1, 2021, and beyond, FGT has 139,000 Dths/day of unsubscribed capacity. If other utilities are forced to take similar actions, there will be insufficient gas transportation capacity available into the state of Florida to support the required NGCC generation. If a third pipeline is constructed, which Seminole understands is required to meet Florida's gas needs regardless of EPA's CPP, that third pipeline will need to be expanded beyond its currently contemplated size to support this incremental gas demand from NGCC facilities. NERC has also expressed concern with EPA's proposal and its lack of consideration of pipeline capacity restraints¹.

The CPP does not provide ample time for EGUs to negotiate contracts for the requisite gas supply and transportation capacity and for the permitting and construction of the necessary pipeline infrastructure. Contracting decisions made with the urgency to comply with EPA's proposed timelines may not

¹ See North American Electric Reliability Corporation, Potential Reliability Impacts of EPA's Proposed Clean Power Plan, 9-10 (November 2014).

be the optimal decisions for consumers in the long-term. Gas transportation commitments will likely have a 20-year minimum time horizon meaning that the next generation will continue to pay for the cost of hasty decisions.

Fuel diversity in Florida and nationally cannot be stressed enough, and its importance is great enough to warrant prior regulation at the federal level (see discussion above regarding the Fuel Use Act). Fuel diversity has served the United States well through frequent periods of fuel supply limitations, many of them related to natural gas disruptions (e.g., hurricanes Katrina and Rita) resulting in little impact to electric grid reliability.

The extreme cold of January and February 2014, particularly in the Mid-Atlantic and Northeast states, provided a peek into the potential consequences of reducing fuel diversity and over-concentrating EGU demand into natural gas. With many EGUs eliminating their ability to utilize fuel oil in order to comply with environmental regulations, these units instead relied solely on natural gas, whose spot prices reached record levels exceeding \$100/MMBtu in areas without adequate supply. For example, in the Northeast, the daily price of natural gas maxed out at \$123.81/MMBtu in January of 2014. Simultaneously, at the

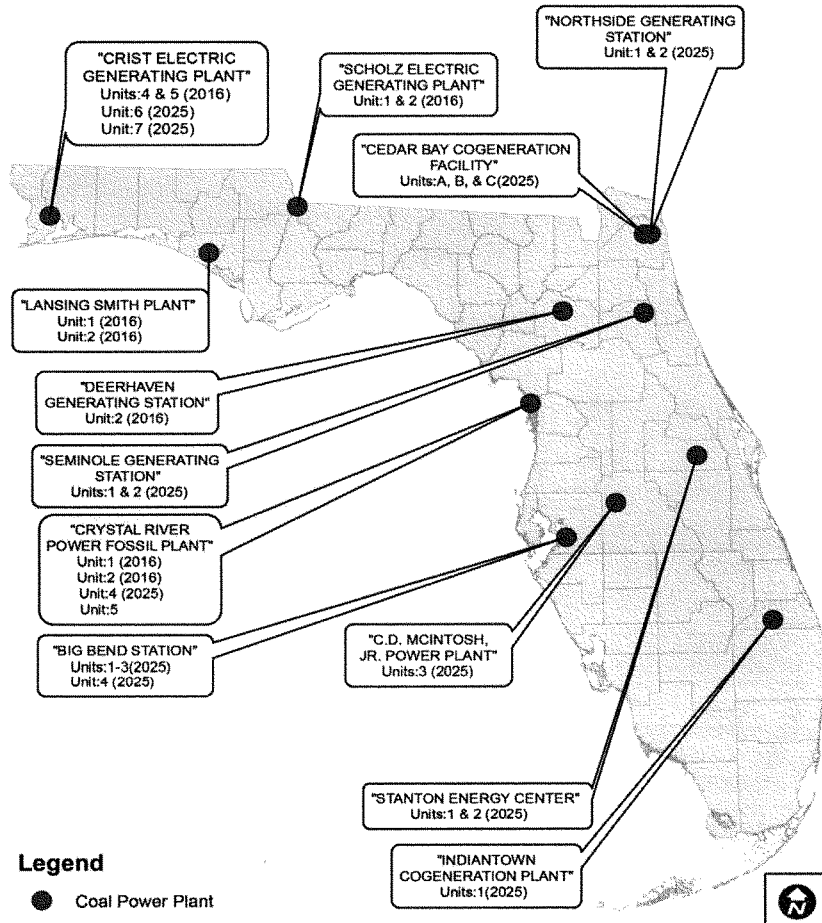
Henry Hub, where supply was not impacted by infrastructure constraints, the price was only \$4.59/MMBtu. This pattern repeated itself in February 2015 when the price of gas in the Northeast reached \$46.00/MMBtu at the same time that the Henry Hub price was only \$2.93/MMBtu. The rapid price increases and extreme volatility of the 2014 and 2015 gas markets, associated with supply constraints, likely foreshadows what would happen in Florida if the CPP were to take effect without the needed gas infrastructure. As EPA's proposal results in additional migration from coal to gas as a fuel choice, cost will become a secondary problem when EGUs are faced with gas supply shortages and reliability is jeopardized.

This fuel diversity need is especially critical for Florida given its geographic location, lack of native energy production capacity and limited electric transmission import capability. With the exception of a limited amount of electricity that can be transported into the state, Florida is essentially an island that relies on generating units within the state and the necessary fuel supply for those units. Florida's current electric reliability is dependent on EGUs' ability to import fuel supply for either immediate consumption, or to store it for consumption later. Coal is a storable fuel source in Florida while natural gas is not. Florida does not have the geological

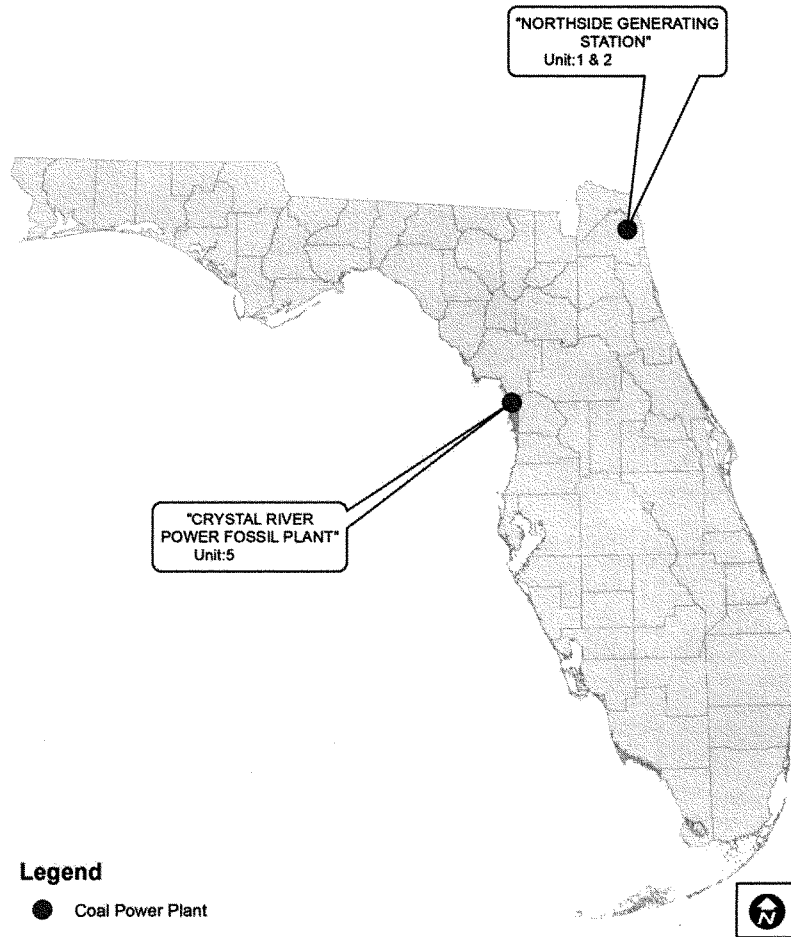
formations to economically store a material amount of natural gas underground. EPA's proposal must allow for a substantial amount of coal-fired electric generation to remain in Florida to ensure some level of fuel diversity and the resulting reliability benefits. To remove more than 90 percent of coal capacity from Florida as proposed by EPA would obligate Florida to rely solely on 'just in time' inventory for nearly all of its fuel supply, with reliability consequences for any disruptions in the supply chain.

Florida Coal Plants

Locations and retirement dates under the EPA's Clean Power Plan



Remaining Florida Coal Plants in Service Under the EPA's Clean Power Plan



4. CONCLUSION

Seminole has serious concerns regarding EPA's CPP for numerous legal, technical, and policy reasons. Accordingly, Seminole requests that EPA withdraw this proposal, and meaningfully address the issues we have raised in this testimony, as well as expanded comments that were submitted to the EPA during the rulemaking process.

Failing this, Seminole wholeheartedly supports the "Ratepayer Protection Act" to protect our members, and Florida consumers, from the disastrous effects of this proposed regulation.

Seminole appreciates the opportunity to provide testimony to the House Energy and Commerce Subcommittee on Energy and Power. If you have any follow-up questions, or wish to discuss this testimony, please do not hesitate to contact us at (813)-739-1354.

Sincerely,

Lisa D. Johnson

Chief Executive Officer & General Manager

Mr. WHITFIELD. Thank you, Ms. Johnson.

At this time I would like to recognize Susan Tierney, who is the senior advisor with the Analysis Group. And thanks for being with us and you are recognized for 5 minutes.

STATEMENT OF SUSAN F. TIERNEY

Ms. TIERNEY. Thank you, Mr. Chairman.

Chairman, Ranking Member Rush, and members of the subcommittee, my name is Susan Tierney. I practice economics in the electric and natural gas industries. I am a former State utility regulator, a former State environmental official, and formerly the assistant secretary for policy at the United States.

One out of every 15 tons of carbon emission anywhere in the entire world comes from the U.S. power sector. Taking action in the U.S. power sector will make a difference on the costly impacts of climate change.

I want to talk about two reports that I have recently co-authored in which we found, first, that many observers have raised concerns about EPA's proposals and their effects on electric system reliability. Such warnings are entirely normal whenever there is a major change in the electric industry, and these warnings play an important role in focusing the attention of the industry on taking steps to ensure reliable electric service to Americans.

Second, natural gas is putting pressure on coal and has already led to retirements of coal unrelated to environmental regulations. Given the significant shifts already underway in the electric system, the industry is already needing to adjust its operational and planning practices to accommodate changes even if EPA had not proposed this regulation. The reliability practices in the industry have been used for decades and they provide a strong foundation from which any reliability concerns about EPA's regulations will be addressed.

Third, the Clean Power Plan provides States with a wide range of compliance options and operational discretion that can prevent reliability issues while also enabling reduction of carbon pollution. Experience has shown that such approaches provide seamless reliable implementation of emissions reductions targets. By contrast, stakeholders concerns about the Clean Power Plan presume that there will be inflexible implementation. They are based on worst-case scenarios and assume that policymakers, regulators, and importantly, the market will standby on the side until it is too late, and there is no historical basis for this. The lights have not gone out when we have had industry changes.

Fourth, the industry, its regulators, and the States are responsible for ensuring electric system reliability while reducing carbon pollution from power plants, as required by law. These responsibilities need not be in tension as long as all parties act in a timely way and use the many reliability tools at their disposal. These issues will be solved by the dynamic interplay of actions by regulators, entities responsible for reliability, market participants, as they always are with many solutions proceeding in parallel.

This one reason why a recent survey of 400 utility executives found that more than 60 percent felt optimistic about the Clean Power Plan and either supported the emissions reductions target or

make them more stringent. The markets tend to respond to clarity and precision and rules rather than uncertainty of the sort that would be introduced by this bill.

Fifth, PJM, the grid operator for the Nation's largest competitive wholesale market and serving customers in 13 States and the District of Columbia, is already adapting to changes underway in the electric industry. PJM's own analyses demonstrate that regional market-based approaches can meet clean power goals at lower cost with retirements spread out over a period of time. These results indicate that energy efficiency and renewable energy will in fact lower the cost of compliance and lower the exposure to coal plants associated with retirements.

Based on our analyses and experience, we conclude that the impacts on electricity rates from well-designed pollution control programs will be modest in the near term and can be accommodated by long-term benefits, in other words, lower electricity bills and positive economic value to States' economies.

States have a long track record of using various regulatory tools to encourage programs and investments that minimize the cost of electricity service consistent with all sorts of public policies ranging from taxes, zoning issues, environmental programs, reliability issues, labor requirements, and States figure out how to do that in a least-cost way.

Although States differ in many ways, every single State has programs, policies, and practices that will enable them to sit in the driver's seat to figure out how to best accommodate changes being introduced by this important carbon control requirement. Market-based mechanisms in particular offer unique opportunities to minimize cost while reducing carbon pollution.

And finally, States have a very long track record of taking steps necessary to protect low-income customers from the hardship associated with electricity rates.

Thank you very much.

[The prepared statement of Ms. Tierney follows:]

Testimony of Susan F. Tierney, Ph.D., Analysis Group, Boston
Before the U.S. House of Representatives
Committee on Energy and Commerce – Subcommittee on Energy and Power
Hearing to Examine EPA's Proposed 111(d) Rule for Existing Power Plants
and the Proposed Ratepayer Protection Act
April 14, 2015

Good morning, Chairman Whitfield, Ranking Member Rush, and Members of the Committee. My testimony focuses on the EPA's proposal for electric system reliability and impacts on consumers.

Clearly, having a reliable and efficient electric industry is critically important for Americans and for the U.S. economy. Americans demand world-class electric reliability at reasonable prices. The U.S., as the world's largest economy and the world's historically largest emitter of carbon pollution, is poised to take seriously its role in controlling such emissions. Fortunately, the EPA's proposed regulation allows flexibility that states can use to minimize impacts on consumers.

In two recent reports I co-authored, we found that:

- Many observers have raised concerns that EPA's proposal will jeopardize electric-system reliability. Such warnings are normal whenever there is major change in the industry and play an important role in focusing the attention of the industry on taking the steps to ensure reliable electric service to Americans.
- Given the significant shifts already underway in the electric system, the industry would need to adjust its operational and planning practices to accommodate changes even if EPA had not proposed its regulation. The reliability practices that the industry and its regulators have used for decades are a strong foundation from which any reliability concerns about EPA's regulations will be addressed.
- The Clean Power Plan provides states a wide range of compliance options and operational discretion that can prevent reliability issues while also reducing carbon pollution and compliance costs. Experience has shown that such approaches allow for seamless, reliable implementation of emissions-reduction targets. By contrast, many stakeholders' concerns about the Clean Power Plan presume inflexible implementation, are based on worst-case scenarios, and assume that policy makers, regulators, and market participants will stand on the sidelines until it is too late to act. There is no historical basis for these assumptions.
- The industry, its regulators, and the States are responsible for ensuring electric-system reliability while reducing carbon pollution from power plants as required by law. These responsibilities are compatible, and need not be in tension as long as all parties act in a timely way and use the many reliability tools at their disposal. These issues will be solved by the dynamic interplay of actions by regulators, entities responsible for reliability, and market participants – with many solutions proceeding *in parallel*. This is one reason why a recent survey of 400+ utility executives found that more than 60% felt optimistic about the Clean Power Plan and either supported the proposed emissions reduction targets or would make them more stringent.
- PJM (the grid operator for the nation's largest competitive wholesale power market) is already adapting to changes underway in the electric industry. PJM's own analyses demonstrate that regional, market-based approaches can meet Clean Power Plan goals at lowest cost, with retirements likely spread out over a number of years. The results indicate that energy efficiency and renewable resources can reduce the quantity of existing coal-fired units at risk of retirement. PJM is well positioned to lower carbon pollution while relying on its standard reliability tools.

Based on our own analysis and experience, we conclude that the impacts on electricity rates from well-designed carbon-pollution control programs will be modest in the near term, and can be accompanied by long-term benefits (lower electricity bills and positive economic value to state economies). States have a long track record of using various regulatory tools to encourage utility programs/investments that minimize the cost of electric service, consistent with the myriad of public policies (tax, environmental, reliability, labor, and other areas of policy) that affect electric supply.

Although states differ in many ways, all states have programs, policies and practices that will allow them to develop plans that align well with their different circumstances while still complying with the new carbon-control requirements. Market-based mechanisms, in particular, offer unique opportunities to minimize costs while also reducing carbon pollution from existing power plants. Also, states have long-standing utility-ratemaking principles, practices and programs to help protect low-income customers.

Thank you for the opportunity to present this testimony to the Subcommittee.

**Testimony of Susan F. Tierney, Ph.D.
Analysis Group, Boston**

**Before the U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy and Power**

**Hearing to Examine EPA's Proposed 111(d) Rule for Existing Power Plants
and the Ratepayer Protection Act**

April 14, 2015

Good morning, Chairman Whitfield, Ranking Member Rush, and Members of the Committee. My testimony focuses on the impacts of the Environmental Protection Agency's recent proposal to regulate carbon pollution from the nation's existing fossil fuel power plants.

I focus my comments in particular on the implications of the EPA's proposal for electric-system reliability and impacts on consumers. I have recently authored or co-authored four papers which address these issues, and want to share their results with the Subcommittee. (I attach them to this statement.)

As background: I am a former state cabinet officer (Secretary of Environmental Affairs) and regulator (Commissioner of the Department of Public Utilities and Director of the state's energy facilities siting board) in Massachusetts. I was appointed to those positions by governors of both parties. I also served as Assistant Secretary for Policy at the U.S. Department of Energy. I have direct familiarity with state administration of federal and state environmental and energy laws. As a consultant for a wide variety of clients (including state governments, private companies, grid operators, utilities, large consumers, energy project developers, foundations, tribal governments), I also have studied the implications of federal and state energy and environmental laws on energy markets, electric reliability, local economies, and consumers. I have participated actively on

industry panels (including serving as head of the policy subgroup of the National Petroleum Council's study on shale gas development, a member of the Secretary of Energy's Advisory Board on Shale gas risk, the chair of the External Advisory Council of the National Renewable Energy Laboratory (NREL), a co-chair of the NAESB Gas-Electric Harmonization Committee, and a co-chair of the Bipartisan Policy Center's project on cyber security and the electric grid). And as a co-lead convening author of the National Climate Assessment's chapter on energy production and use, I am deeply aware of the state of knowledge about the implications of a changing climate on American energy facilities and markets, and consumers' demand for energy in the years ahead.

My testimony today focuses in particular on the EPA's Clean Power Plan, which the EPA proposed in June 2014 under the authority given to it by Congress in the Clean Air Act ("Act") and following upon the 2007 ruling of the U.S. Supreme Court in *Massachusetts v. the Environmental Protection Agency* that greenhouse gases ("GHG") meet the definition of an "air pollutant" under the Act.

Having a reliable and efficient electric industry is, of course, critically important for Americans and for the U.S. economy. Americans demand world-class electric reliability at reasonable prices. The U.S., as the world's largest economy and the world's historically largest emitter of carbon pollution, is poised to take seriously its role in controlling such emissions.

The American power sector represents the nation's largest source of greenhouse gas emissions. Americans are already feeling the damaging effects of climate change. The U.S.'s cumulative CO₂ emissions exceed those of any other country, and our power sector produces one out of every 15 tons of energy-related CO₂ emissions produced anywhere in the globe. Taking action to reduce

emissions from the U.S. power sector will have a material impact on reducing global emissions and mitigating the costly impacts of climate change.

Just as important are the laws, policies, and expectations surrounding assurance of electric-system reliability and provision of electricity at just and reasonable rates. Fortunately, the EPA's proposed regulation allows flexibility that states can use to implement the Clean Power Plan in ways that can minimize impacts on consumers and respects their expectations for a reliable electric system.

Having read a significant portion of the comments submitted by stakeholders about the Clean Power Plan, my co-authors and I found in our two most recent reports (published in February and in March of 2015) that:

- Since the EPA proposed its Clean Power Plan last June, many observers have raised concerns that its implementation might jeopardize electric-system reliability. Such warnings are common whenever there is major change in the industry and play an important role in focusing the attention of the industry on taking the steps necessary to ensure reliable electric service to Americans.
- Given the significant shifts already underway in the electric system, the industry would need to adjust its operational and planning practices to accommodate changes even if EPA had not proposed the Clean Power Plan. As always, grid operators and utilities are already looking at what adjustments to long-standing planning and operational practices may be needed to stay abreast of, understand, and adapt to such changes in the industry.

- The standard reliability practices that the industry and its regulators have used for decades are a strong foundation from which any reliability concerns about the Clean Power Plan will be addressed.
- The Clean Power Plan provides states and power-plant owners a wide range of compliance options and operational discretion (including various market-based approaches, other means to allow emissions trading among power plants, and flexibility on deadlines to meet interim targets) that can prevent reliability issues while also reducing carbon pollution and compliance costs. Experience has shown that such approaches allow for seamless, reliable implementation of emissions-reduction targets.
- Some of the reliability concerns raised by stakeholders about the Clean Power Plan presume inflexible implementation, are based on worst-case scenarios, and assume that policy makers, regulators, and market participants will stand on the sidelines until it is too late to act. There is no historical basis for these assumptions.
- In the end, the industry, its regulators and the States are responsible for ensuring electric-system reliability while reducing carbon pollution from power plants as required by law. These responsibilities are compatible, and need not be in tension as long as all parties act in a timely way and use the many reliability tools at their disposal.

These issues will be solved by the dynamic interplay of actions by regulators, entities responsible for reliability, and market participants – with many solutions proceeding *in parallel*. Indeed, this dynamic interplay is one reason why a recent survey of over 400 utility executives nationwide found

that more than 60 percent felt optimistic about the Clean Power Plan and either supported EPA's proposed current emissions reduction targets or would make them more stringent.

Further, in a report focusing on the "PJM Interconnection" – the grid operator for the nation's largest competitive wholesale power market, which touches 13 states and the District of Columbia – we found that:

- PJM is already adapting to changes underway in the electric industry, and doing so successfully from a reliability point of view. As a region with electric capacity totaling approximately 200 gigawatts ("GW"), PJM has seen some 12.5 GW of mostly aging, coal-fired resources retire during the 2010-2014 period, due largely to economic and regulatory factors. Another 7.6 GW is expected to be retired over the next 3-4 years. These plants are being replaced with new resources – primarily natural gas-fired and wind projects – and there is a deep bench of additional new proposed projects ready to step in to meet future needs. PJM has effectively administered processes to manage this transition in a way that meets both reliability and efficiency objectives.
- PJM's own analysis of compliance options demonstrates that regional, market-based approaches can meet Clean Power Plan goals across PJM states at lowest cost, with retirements likely spread out over a number of years. PJM's recent modeling, performed at the request of the Organization of PJM States, evaluates a wide array of potential compliance approaches and identifies capacity at risk of retirement. In addition to stressing the benefits of a flexible and collaborative approach, the results indicate that expansion of energy efficiency and renewable resources can reduce the quantity of existing coal-fired units at risk

of retirement. Also important, PJM's analysis only reflects adding capacity from proposed projects already in PJM's interconnection queue (totaling 14.5 GW); the total quantity of new projects is likely to be much higher over the full time frame of Clean Power Plan implementation.

- PJM and the PJM states have extensive authorities and experience with administrative mechanisms to address – and successfully resolve – potential reliability violations associated with the retirement of power plants. These mechanisms include extending unit operations through “reliability must run” contracts, accelerated procurements of demand and supply resources, temporary waivers of regulatory requirements if or when reliability is an issue, and fast-tracking resource siting and permitting when needed to meet short-run reliability challenges.
- PJM has demonstrated success with reliability challenges in the past, including retirements related to low natural gas prices and the Mercury Air Toxics Standard (“MATS”), and stresses on the fleet during the winter 2014 Polar Vortex. In the case of the Polar Vortex, some stakeholders have claimed that operating conditions during early 2014 prove that the Clean Power Plan could be a threat to reliability. In fact, for PJM, the Polar Vortex is a case study of how numerous planning, operational, and market tools can be (and are) deployed to ensure reliability in response to unexpected events. Moreover, during the more recent harsh 2015 winter when new record-breaking peak loads occurred, PJM's “reliability tool kit” functioned nicely and possibly even improved over the past year.

- PJM is well positioned to lower carbon pollution from existing power plants while relying on the reliability tools and operating procedures it uses with great success.

We note that some observers have contended that consumers will experience net costs from controlling carbon pollution from power plants because, in those observers' view, overall compliance costs will outweigh economic and other benefits. EPA's analysis indicates that: the nation's citizens and economy benefit from public health benefits of reducing pollution from existing power plants; and electricity customers will see lower electricity bills over the long run with the Clean Power Plan in place.

Based on our own analysis and experience, we believe that the impacts on electricity rates from well-designed carbon-pollution control programs will be modest in the near term, and can be accompanied by long-term benefits in the form of lower electricity bills and positive economic value to state and regional economies.

There are sound reasons to be confident that electricity consumers can and will benefit from states' plans to lower the carbon intensity of their electric systems:

- First, states have a long track record of using various regulatory and other policy tools to encourage utility programs and investments that minimize the cost of electric service, consistent with the myriad of public policies (tax, environmental, reliability, labor, and other areas of policy) that affect the provision of electricity. State officials (including utility regulators) are keenly focused on protecting electricity customers and will keep that objective front and center as they determine how to reduce carbon pollution.

- Second, under the proposed Clean Power Plan, states will have the flexibility, experience and tools to prepare and implement State Plans that fit their circumstances, minimize costs, and provide benefits to customers. Each state can put together the elements of a plan well-suited to its own conditions, and will have the ability to phase in changes over the 2020-2029 period in ways that accommodate smooth transitions. Although states differ in many ways – including their electric systems, their regulatory culture, and their electric-industry structure – all states have programs, policies and practices that will allow them to develop plans that align well with their different circumstances while still complying with the new carbon-control requirements.

- Third, market-based mechanisms offer unique opportunities to minimize costs while also reducing carbon pollution from existing power plants. States can implement such market-based programs within state boundaries or collaborate with other states to develop and implement workable multi-state programs to control carbon pollution from existing power plants in ways that fully preserve the rights of states in program design and administration. Such multi-state, market-based mechanisms to control carbon emissions can also respect the practicalities of reliable electric system operations, and can be seamlessly integrated into both traditionally regulated and competitive electric-industry settings. Market-based mechanisms can provide opportunities for states to capture the economic value of carbon-emission allowances, and direct those revenues for consumer and public benefit. Based specifically on our detailed analysis of states' experience with the Regional Greenhouse Gas Initiative and the design of a wide array of programs that insulate lower-income consumers,

we believe that the impacts on electricity *rates and bills* from well-designed CO₂-pollution control programs will be modest in the near term, especially for low-income customers.

- Fourth, states are well equipped through long-standing utility-ratemaking principles, practices, and programs to help protect low-income customers when electricity costs increase. Such tools include discounted rates and bill-arrearage management plans, dedicated funding for low-income energy-efficiency and weatherization programs, utility-driven charitable contribution programs, one-time emergency assistance programs, LIHEAP funding for heating and utility bill assistance, and disconnect/shut-off protection policies. Among the many states we found to be offering targeted energy efficiency programs for low-income customers are Colorado, Florida, Georgia, Illinois, Maine, Maryland, Michigan, Missouri, Montana, North Carolina, Ohio, and Texas.

In the end, the states are in control. State environmental, energy and utility-regulatory agencies can tailor compliance approaches to their individual circumstances, and in doing so they can play a significant role in driving down and managing the costs of Clean Power Plan compliance. The components of their State Plans will affect compliance costs and collateral benefits. And states' regulatory and ratemaking policies can influence how compliance actions undertaken by owners of power plants and other actors translate into impacts on electricity bills.

There clearly are a number of strategies that states can include in their State Plans to at least partially offset the impact of program costs on consumers. Experience demonstrates that some approaches can even generate net benefits to electricity customers and the larger state economy. An example of this is the RGGI states' auction of carbon allowances and use of the auction proceeds to support

energy efficiency and customer bill credits; we have previously concluded in our detailed study of RGGI's experience that it provided net benefits (and lower electricity bills) to customers and the economy of each participating state.

Finally, the electric industry is undergoing major transitions. These changes arise from such things as: dramatic increases in domestic energy production (stemming from the shale gas revolution), shifts in fossil fuel prices (so that gas is less expensive than coal in many power plants), retirements of aged infrastructure, and strong growth in energy efficiency and distributed energy resources. In light of the significant shifts already underway in the electric system, the industry would need to adjust its operational and planning practices to accommodate changes even if EPA had not proposed its carbon-control regulation.

Thank you for the opportunity to present this testimony to the Subcommittee.

[Additional material submitted by Ms. Tierney has been retained in committee files and also is available at <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=103312>.]

Mr. WHITFIELD. Thank you.

Our next witness is Melissa Hoffer, who is the chief of the Energy and Environment Bureau, Office of the Attorney General for the Commonwealth of Massachusetts. So you are recognized for 5 minutes, Ms. Hoffer.

STATEMENT OF MELISSA A. HOFFER

Thank you, Chairman Whitfield, Ranking Member Rush, and members of the committee. Our office really appreciates the opportunity to be here today to provide testimony on EPA's Clean Power Plan and the proposed Ratepayer Protection Act.

Section 111(d) authorizes EPA to establish standards for any emissions from existing sources that endanger public health and welfare but are not regulated under the National Ambient Air Quality Standards program or the NAAQS program, or the Hazardous Air Pollutant program, the HAP program. The 1970 Clean Air Act legislative history confirms that Congress intended that these three programs together would ensure no gaps in regulation of stationary source emissions that pose danger to public health or welfare. Courts have therefore held that these provisions collectively establish a comprehensive program for controlling and improving the Nation's air quality.

Let's be clear. Those who challenge EPA's authority are taking the position that simply because EPA is on the one hand regulating emissions of hazardous pollutants from power plants, it may not also regulate emissions of carbon dioxide, which is a different type of pollutant not regulated under the Hazardous Air Pollutant program. The Clean Power Plan imposes no double regulation of the same pollutant. Rather, it proposes to do exactly what Congress intended, use Section 111(d) to regulate a pollutant that is not regulated under either the NAAQS or the HAP programs.

It makes no sense that EPA's opponents would exclude the largest sources of carbon dioxide, which are power plants, from regulation under Section 111(d) simply because they also happen to be huge sources of different toxic air pollutants. That interpretation is not supported by the text of the statute or the legislative history of the 1990 amendments.

The more reasonable interpretation is that Congress intended for EPA to do both. There is no evidence that Congress intended with the 1990 amendments to make a sweeping substantive change to Section 111(d). In fact, to the contrary, Congress specifically provided that EPA's regulation of emissions under Section 112 must not diminish Section 111(d) requirements. Accordingly, EPA has long regulated source categories under both 111(d) and Section 112 and I have provided some examples and materials attached to my testimony.

In the four presidential administrations since the 1990 amendments, EPA has consistently interpreted Section 111(d) to require regulation of any air pollutant not regulated under the NAAQS program on the one hand or the HAP program on the other. Opponents interpretation would effectively gut Section 111(d) undermining its function as recognized by the Supreme Court of the United States in *AEP v. Connecticut*, which is to "provide a means"—and this is a direct quote from the decision—"to seek lim-

its on emissions of carbon dioxide from domestic power plants.” They ignore the Senate amendment and the fact that the House amendment itself is subject to multiple readings.

Consistent with the DC Circuit’s ruling, EPA has correctly attempted to harmonize the House and Senate amendments to the extent they appear inconsistent. The discussion drafts compliance extension provisions are not necessary. The DC Circuit may stay any EPA final rule if it finds the party seeking a stay has demonstrated that it is likely to prevail on the merits, without the relief it would be irreparably harmed, the issuance of the stay would not substantially harm other parties interested in the proceedings, or on balance a stay would favor the public interest.

The discussion draft would jettison this careful balancing, which has been a part of judicial tests for over 50 years, in favor of what is effectively an automatic stay rule that would halt Clean Power Plan implementation for years during the pendency of any litigation without regard to the merits of the claims, the impacts to other interested parties, or the consequences for the public interest. It would also create an unprecedented escape hatch for States wholly to opt out of urgently needed carbon dioxide pollution control requirements solely on the basis of unverified claims regarding cost or purported reliability concerns.

With the passage of the 1970 Clean Air Act Congress establish national air pollution control requirements and it employed a cooperative federalism model to implement those requirements. The discussion draft’s opt-out provision would break the promise backed act by the Federal Government of the Clean Air Act that states the EPA will work together to protect public health.

The Clean Power Plan’s flexible approach leverages States’ innovation and expertise to achieve cost-effective reductions of dangerous global warming pollution. For example, Massachusetts is part of the multistate Regional Greenhouse Gas Initiative, or RGGI, which instituted a mandatory power sector cap-and-trade program since 2009. When RGGI went into effect, the RGGI States have reduced power sector carbon dioxide emissions 40 percent below 2005 levels by encouraging shifts to less carbon-intensive fossil fuel generation, increasing reliance on renewables and reducing energy demands through efficiency.

Regionally, in the first 3 years of the RGGI program, RGGI added \$1.6 billion to the regional economy and created thousands of new jobs in the process. As a result of RGGI, electricity consumers, including households and businesses, enjoy a gain of over \$1 billion as their overall electricity bills drop over time.

The Clean Power Plan with Massachusetts to rely on what we know works, including RGGI, to achieve the required carbon dioxide reductions, and that is good for our economy. Due in large part to our innovative energy environmental policy, clean energy is now a multibillion-dollar sector in Massachusetts supporting double digit job growth—

Mr. WHITFIELD. Ms. Hoffer, I have let you go over 1 minute and 20 seconds.

Ms. HOFFER [continuing]. In 2013 to 2014. Thank you.
[The prepared statement of Ms. Hoffer follows:]

**Testimony of Melissa A. Hoffer, Assistant Attorney General
Chief, Energy and Environment Bureau, Massachusetts Attorney General's Office
Before the U.S. House of Representatives
Committee on Energy and Commerce – Subcommittee on Energy and Power
Hearing to Examine EPA's Proposed 111(d) Rule for Existing Power Plants
and the Proposed Ratepayer Protection Act
April 14, 2015**

SUMMARY OF TESTIMONY

My testimony will summarize (1) the legal basis for the Environmental Protection Agency's (EPA) authority under Clean Air Act Section 111(d) to regulate power plant carbon dioxide emissions; (2) why the Discussion Draft's compliance extension provision is not necessary and why its opt out provision would set a precedent that could substantially weaken implementation of the Clean Air Act; and (3) how the Clean Power Plan's flexible approach leverages states' innovation and expertise to achieve cost-effective reductions of dangerous global warming pollution.

**Testimony of Melissa A. Hoffer, Assistant Attorney General
Chief, Energy and Environment Bureau, Massachusetts Attorney General's Office
Before the U.S. House of Representatives
Committee on Energy and Commerce – Subcommittee on Energy and Power
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and the Proposed Ratepayer Protection Act
April 14, 2015**

Good morning, Chairman Whitfield, Ranking Member Rush, and Members of the Committee. The Massachusetts Attorney General's Office appreciates this opportunity to provide testimony on EPA's Clean Power Plan and the Proposed Ratepayer Protection Act.

The Environmental Protection Agency (EPA) Has Authority Under Clean Air Act Section 111(d) To Regulate Power Plant Carbon Dioxide Emissions

Section 111(d) plays a critical role in the Clean Air Act's comprehensive scheme for regulating stationary sources by allowing EPA and states to reduce harmful air pollution from existing stationary sources that is not regulated under the National Ambient Air Quality Standards (NAAQS) program (Sections 108-110), or the hazardous air pollutant (HAP) program (Section 112). The NAAQS and HAP programs address emissions of certain listed pollutants, respectively, criteria pollutants and hazardous pollutants. By contrast, with Section 111(d), Congress more broadly authorized EPA to establish standards for *any* emissions from existing sources that endanger public health or welfare but are not regulated under the NAAQS or HAP programs.

Congress drafted the Clean Air Act with the intent that these three programs would ensure "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." S. Rep. No. 91-1196, at 20 (1970). These provisions, therefore, collectively "establish[] a comprehensive program for controlling and improving the nation's air quality." *Luminant Generation Co. v. EPA*, 675 F. 3d 917, 921 (5th Cir. 2012) (internal quotation omitted).

Let's be clear: Those who challenge EPA's authority are taking the position that, simply because EPA is regulating emissions of *hazardous* pollutants from power plants, it may not also regulate emissions of carbon dioxide—a pollutant *not* regulated under the hazardous air pollutant program. The Clean Power Plan imposes no double regulation of the same pollutant; rather, it proposes to do exactly what Congress intended—implement regulation of a pollutant, carbon dioxide, that is not regulated under either the NAAQS or HAP programs. It makes no sense—and neither the language of the Act, nor its legislative history provide any basis to conclude—that Congress wanted to force EPA to choose between regulating *either* hazardous air pollution from power plants *or* dangerous carbon dioxide pollution from power plants, but not both. EPA's opponents would exclude the largest sources of carbon dioxide—power plants—from regulation under Section 111(d) simply because they also happen to be huge sources of completely different, toxic air pollutants. That interpretation is not supported by the text of the statute or the legislative history of the 1990 amendments, and in light of the Act's Congressionally stated purpose “to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population,” 42 U.S.C. § 7401(b)(1), the more reasonable interpretation is that Congress intended for EPA to do both. Congress recognized that different air pollutants cause different harms to public health and the environment, and frequently require different control strategies.

In 1990, the Clean Air Act's HAP program was amended extensively after EPA's delays in listing and regulating hazardous pollutants “proved to be disappointing.” *Sierra Club v. EPA*, 353 F. 3d 976, 979-80 (D.C. Cir. 2004). The pre-1990 approach had required EPA to identify and list certain air pollutants that “cause or contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible, illness” and put in place emissions standards that

would “provide[] an ample margin of safety to protect the public health.” Pub. L. No. 91-604, § 112(a)(1), (b)(1)(B), 84 Stat. 1676, 1685 (1970). Congress was well aware of the public health risks posed by hazardous air pollution, and recognized that the law had “worked poorly,” since “[i]n 18 years, EPA has regulated only some sources of only seven chemicals.” S. Rep. No. 101-228, at 128, 1990 U.S.C.C.A.N. at 3513 (internal quotations omitted). Congress’s focus in 1990, with respect to regulation of hazardous air pollutants, was to remedy the regulatory paralysis that had prevented EPA from putting into place urgently needed hazardous air pollution emissions controls. *See New Jersey v. EPA*, 517 F.3d 574, 578 (D.C. Cir. 2008).

Before the 1990 amendments, Section 111(d) required that state plans address “any air pollutant which is not included on a list published under Section 7408(a)” (a reference to the NAAQS program), or “7412(b)(1)(A) of this title,” a reference to the then-existing HAP program. *See* 42 U.S.C. § 7411(d) (West 1977). When Congress amended Section 112 in 1990, instead of relying on EPA’s listing of hazardous air pollutants to trigger Section 112 regulation, Congress itself listed 189 hazardous air pollutants and directed EPA to list categories of major and area sources for each of those pollutants, and establish emission standards for each source category. *See* 42 U.S.C. § 7412(b)(1), (c)(1), (d)(1).

Congress also made conforming amendments to Section 111(d)—different conforming language from the House and Senate bills was, however, included in different sections of the final legislation without being reconciled in conference. The Senate amendment replaced the existing cross-reference to Section 112(b)(1)(A) (which section was eliminated by the 1990 amendments) with a cross reference to the new Section 112(b). As a result, the Senate amendment requires that Section 111(d) standards be developed for “any pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or section

112(b).” Pub. L. No. 101-549, § 302(a), 104 Stat. 2399, 2574 (1990). The House amendment also replaced the existing cross-reference to Section 112(b)(1)(A); its language requires Section 111(d) standards be developed for “any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or emitted from a source category which is regulated under section 112.” Pub. L. No. 101-549, § 108(g), 104 Stat. 2399, 2467 (1990).

Both amendments were signed into law by then-President Bush, and both appear in the Statutes at Large, but only the House amendment appears in the U.S. Code. The text of the Statutes at Large governs when it is inconsistent with the U.S. Code. *United States Nat’l Bank of Oregon v. Indep. Ins. Agents of America*, 508 U.S. 439, 448 (1993).

There is no evidence that Congress intended with these amendments to make a sweeping, substantive change to Section 111(d)’s unique role in the Act’s comprehensive regulatory scheme. Indeed, to the contrary, in Section 112(d)(7), Congress specifically provided that EPA’s regulation of emissions under Section 112 must not impair Section 111 requirements for different emissions from the same sources. *See* 42 U.S.C. § 7412(d).

Moreover, the legislative history indicates that Congress intended the Senate’s amendment to Section 111(d) to be in the final bill. After the House amended the Senate’s bill and deleted the Senate’s seven “Conforming Amendments,” (including the revision to section 111(d)), the Conference Committee *added the Senate’s conforming amendments back into the final bill. Compare* S. 1630, 101st Cong. (as passed by House, May 23, 1990) *with* Pub. L. No. 101-549, § 302(a), 104 Stat. 2399, 2574 (1990). As well, when the Congressional Research Service compiled the legislative history of the 1990 amendments shortly after their enactment, it

transcribed the amended Act by including both the House and Senate amendments to Section 111(d), noting that the amendments were “duplicative” and simply used “different language [to] change the reference to section 112.” A Legislative History of the Clean Air Act Amendments of 1990, Vol. 1, at 46 & n.1 (1993).

Interpreting Section 111(d) to bar regulation of any non-criteria, non-HAP pollutant emitted by a source that also happens to emit hazardous air pollutants would effectively gut Section 111(d), nullifying its role as a backstop to ensure comprehensive protection of public health from harmful air pollution. EPA has long regulated source categories under both Section 111(d) and Section 112. *See Attachment A* at p. 12 & n. 8. Such an interpretation would undermine Section 111(d)’s function, as recognized by the Supreme Court in *AEP v. Connecticut*, to “provide[] a means to seek limits on emissions of carbon dioxide from domestic power plants.” 131 S. Ct. 2527, 2537-38 (2011).

Opponents’ interpretation ignores the Senate amendment, and fails to address the fact that the House amendment itself is subject to multiple readings. For example, it could reasonably read as preserving, as did the Senate amendment, Section 111(d)’s role to regulate emissions not regulated under the NAAQS or HAP programs. The phrase “which is regulated under Section 7412” could be read as modifying both the phrase “any air pollutant” and the phrase “source category,” referencing those air pollutant emissions that are actually subject to Section 112 regulation because both the air pollutant is listed as a pollutant subject to regulation under Section 112 *and* the source category is listed as a source category subject to Section 112 regulation. Read this way, Section 111(d) would preclude regulation only of pollutants—like power plant mercury emissions—that are actually regulated under Section 112.

EPA has correctly attempted to harmonize the House and Senate amendments, to the extent they appear inconsistent. The D.C. Circuit has previously held that where Congress “drew upon two bills originating in different Houses and containing provisions that, when combined, were inconsistent in respects never reconciled in conference . . . it was the greater wisdom for [EPA] to devise a middle course . . . to give maximum possible effect to both.” *Citizens to Save Spencer Co. v. EPA*, 600 F. 2d 844, 872 (D. C. Cir. 1979).

The Discussion Draft's Compliance Extension Provisions Are Not Necessary and Its Opt Out Provisions Would Set a Dangerous Precedent

The Discussion Draft's compliance extension provisions are not necessary. There already are well established legal procedures in place by which agency action may be stayed pending judicial review. *See* FRAP 18; D. C. Cir. R. 18. The D. C. Circuit has “customary power to stay [agency action] under review,” *Scripps-Howard Radio, Inc. v. Federal Communications Commission*, 316 U.S. 4, 11, (1942), and properly may stay any final rule EPA may issue if it finds the party seeking a stay has demonstrated that (1) it is likely to prevail on the merits of the appeal; (2) without relief, it will be irreparably harmed; (3) the issuance of the stay would not substantially harm other parties interested in the proceedings; and (4) on balance, the stay would favor the public interest. *See Virginia Petroleum Jobbers Assoc. v. Federal Power Commission*, 259 F. 2d 921 (1958). This standard—in place in the courts for over fifty years—has withstood the test of time, and ensures that courts will undertake a careful balancing of interests before granting a stay of agency action. The Discussion Draft would jettison this careful balancing in favor of what is effectively an automatic rule that would halt Clean Power Plan implementation

for years during the pendency of any litigation, without regard to the merits of the claims, the impacts to other interested parties, or the consequences for the public interest.

Further, the extension provisions, by requiring implementation of the Plan to be delayed until all judgments are final in any qualifying challenge brought to the Rule, would create powerful incentives for frivolous litigation in an effort to stall and avoid compliance with the Clean Power Plan.

The Discussion Draft would also create an unprecedented escape hatch for states wholly to opt out of urgently needed carbon dioxide pollution control requirements solely on the basis of unverified claims regarding costs or purported reliability concerns. It begs the question of what comes next—could states also then opt out of their Clean Air Act obligations to plan for control of soot, which harms millions of Americans every year?

With the passage of the 1970 Clean Air Act, Congress established national air pollution control requirements, and it employed a cooperative federalism model to implement those requirements. For example, under the NAAQS program, EPA sets the ambient air quality standards, and states develop and submit plans setting forth their own paths for achieving compliance. If a state fails to submit a plan, Congress created a health-protective backstop—EPA steps in to write a plan for the state. Congress understood that, without national standards, Americans' health and well-being would suffer, since air pollution travels across state borders—an upwind state willing to allow its facilities to emit more pollution would place at risk those living in a downwind state, no matter how stringent that downwind state's own pollution controls might be.

The Discussion Draft's opt out provision would break the promise, backed by the federal government, of the Clean Air Act—that air pollution will be controlled to protect public health.

The Clean Power Plan's Flexible Approach Leverages States' Innovation and Expertise to Achieve Cost-Effective Reductions of Dangerous Global Warming Pollution

The Clean Power Plan's cooperative federalism approach ensures that states will have maximum flexibility to design compliance plans that work best for states. Massachusetts is a part of the multi-state Regional Greenhouse Gas Initiative (RGGI), which instituted a mandatory power sector cap and trade program. Since 2009 when RGGI went into effect, the RGGI states have reduced regional carbon dioxide emissions 40 percent below 2005 levels by encouraging shifts to less carbon intensive fossil fuel generation, increasing reliance on renewables, and reducing energy demand through efficiency. Since RGGI was implemented, the Massachusetts economy has largely outperformed the Nation's, and Massachusetts employers have added more than 200,000 jobs. Regionally, one independent study concluded that, in the first three years of the RGGI program, RGGI added \$1.6 billion to the regional economy¹ and created thousands of new jobs in the process.² As a result of RGGI, electricity consumers, including households and businesses, enjoy a gain of over a billion dollars as their overall electricity bills drop over time.³ The Clean Power Plan would allow Massachusetts to rely on what we know works, including RGGI, to achieve the required carbon dioxide emissions reduction. And that is good for our economy—due in large part to our innovative energy and environmental policy, clean energy is now a multi-billion dollar sector in Massachusetts supporting double-digit job growth between 2013 and 2014. Our experience shows that we need not choose between environmental and economic sustainability—we can make clean power investments while growing the economy.

¹ See Analysis Group, *The Economic Impacts of the Regional Greenhouse Gas Initiative on Ten Northeast and Mid-Atlantic States* at 2 (2011), available at http://www.analysisgroup.com/uploadedfiles/publishing/articles/economic_impact_rggi_report.pdf

² *Id.* at 7.

³ *Id.* at 4.

[Additional material submitted by Ms. Hoffer has been retained in committee files and also is available at <http://docs.house.gov/meetings/IF/IF03/20150414/103312/HHRG-114-IF03-Wstate-HofferM-20150414-SD001.pdf>.]

Mr. WHITFIELD. At this time I would like to recognize the gentleman, Mr. Sunday, who is the manager of Government affairs, Pennsylvania Chamber of Business and Industry, for 5 minutes.

STATEMENT OF KEVIN SUNDAY

Mr. SUNDAY. Thank you. Chairman Whitfield, Ranking Member Rush, members of this committee, my name is Kevin Sunday, manager of Government affairs for the Pennsylvania Chamber of Business and Industry. It is an honor to appear before you today to express our concerns regarding EPA's Clean Power Plan proposal and also to support Representative Whitfield with ratepayer protection legislation.

As background, the Pennsylvania Chamber of Business and Industry is the largest broad-based business advocacy association in Pennsylvania and our members are of all sizes and industrial sectors. All our members need energy to survive and compete, and so do Pennsylvania citizens.

Our unemployment rate in Pennsylvania is below the national average and we have made substantial and documented reductions in air pollution over the past decade. We are the second-leading State in total electricity, natural gas, and nuclear power generation, and we are fifth in coal production.

Our manufacturing sector is the eighth-largest in the Nation employing almost 600,000 people. To cite but one example about how our manufacturers need power, one of our member companies involved in processing natural gas worked with the local utility to install a dedicated local substation to give them the voltage they need to operate. Their facility, I would add, requires hundreds of local workers, many of them union tradesmen. Further, that same utility is investing in tens of millions of dollars in infrastructure in the Marcellus Shale pipe, also using union labor, to deliver the power that other drillers and manufacturers will need.

But unfortunately, EPA's proposal threatens Pennsylvania's biggest competitive advantage, which is low energy prices. The significant cost of this rule by EPA's own estimation will result in relatively small reductions in global emissions of less than half of 1 percent likely soon to be eclipsed by development abroad.

We have a number of questions about EPA's Clean Power Plan which I have included in greater length in my written testimony but generally here are the three key ones: Are building blocks 1 and 2 truly realistic in a restructure generation market like Pennsylvania's? Why is 71 percent of Pennsylvania's goal based on an expectation that we mandate incredibly high amounts of renewable generation and energy efficiency requirements? And why is Pennsylvania being punished for being an early adopter of renewable generation and energy efficiency?

In the Clean Power Plan Pennsylvania's renewable goal is the second-highest in the Nation, an almost 800 percent increase over current levels, and we are expected to deploy it at a faster rate than any other State. Senator Bob Casey, Jr., made a great point in his comment letter to EPA that Pennsylvania is "second-to-last in terms of technical potential for meeting the overall needs of its own energy sector through renewable generation." To get to EPA's goal of 30,000 more gigawatt hours, ratepayers are going to have

to fund extremely expensive solar, geothermal, or other renewable projects, something they unfortunately know all too much about.

In 2004, almost a decade before EPA's 2012 baseline year, Pennsylvania passed the Alternative Energy Portfolio Standards Act. To highlight one of the problems with this act, between 2008 and 2013, the AEPS mandates doubled from about 5.7 percent to 10.2 percent of electricity sales but the annual cost of compliance increased 54-fold. By the time we get to the peak mandate under existing law of 18 percent in 2021, the cost of electricity statewide could increase by as much as \$3.2 billion.

Also ignored in the Clean Power Plan's 2012 baseline is our energy efficiency law which was passed in 2008 and to date has cost consumers \$1.7 billion to reduce their electricity consumption by 4.5 percent. Utilities and ratepayers are also expected to spend another \$735 million over the next 3 years for additional energy efficiency mandates, and all told, Pennsylvania spent the fifth-highest amount annually of any State to comply with energy efficiency mandates.

I want to now highlight our experience with the Chesapeake Bay TMDL, another multibillion-dollar Federal mandate that we believe is instructive in this conversation. Originally, EPA pledged flexibility, but then the agency settled with environmental groups and gave Pennsylvania regulators just 6 months to develop a federally enforceable compliance plan. Now, reminiscent of a 111(d) FIP, EPA has said that if the target reductions are not met, EPA will sanction the State and permitted facilities. There also remains the continual threat of citizen suits to ratchet up enforceability in compliance time frames.

And just one final point to crystallize this at a local level: The City of Lancaster spent \$150 million in sewage improvements and millions more in green infrastructure as part of their Bay TMDL mandate. EPA hailed them as "leading the way, a national example." Flash forward to this past winter, EPA is pressuring city officials to sign a new consent decree to get additional reductions at an additional cost to taxpayers for as much \$400 million.

Again, thank you for your time this morning and afternoon, and I look forward to answering any questions you may have.

[The statement of Mr. Sunday follows:]



Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

**Hearing re: EPA's Proposed 111(d) Rule
for Existing Power Plants,
and H.R. __, the Ratepayer Protection Act**

Before the:
**Committee on Energy and Commerce
Subcommittee on Energy and Power
United States House of Representatives**

Presented by:

Kevin Sunday
Manager, Government Affairs

Washington, D.C.
April 14, 2015

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Kevin Sunday, Manager, Government Affairs
 Pennsylvania Chamber of Business and Industry
 Testimony Before the Committee on Energy and Commerce Subcommittee on Energy and Power
 Hearing re: EPA's 111(d) Rule for Existing Power Plants, and H.R. ___, the Ratepayer Protection Act
 April 14, 2015

Preface to Testimony
 Abbreviated Summary of Key Points

As directed by the Form of Testimony Before the Committee on Energy and Commerce instructions, the following bullets summarize the key points of the following testimony.

- Pennsylvania is the largest net exporter of electricity among states and has an unemployment rate that is below the national average.
- The members of the Pennsylvania Chamber of Business and Industry need affordable, reliable energy, as do all Pennsylvanians.
- The Clean Power Plan threatens the state's biggest competitive advantage: low energy prices.
- The Clean Power Plan will increase the cost of electricity in Pennsylvania by double-digits.
- The events of the 2014 polar vortex demonstrated reliable generation resources are necessary.
- There are significant questions regarding the ability of a restructured, competitive generation market such as Pennsylvania's to foster implementation of Building Blocks 1 and 2.
- More than 70% of Pennsylvania's Clean Power Plan target comes from drastically increased renewable energy and energy efficiency mandates (Building Blocks 3 and 4).
- Building Blocks 3 and 4 punish Pennsylvania for being an early adopter of such measures, which have already cost businesses and consumers nearly \$2 billion and are projected to continue to rise.
- Building Block 3 anticipates Pennsylvania deploy the second-highest increase in renewable among all states and do so at the highest expected annual growth rate in the nation.
- Pennsylvania's experience with the Chesapeake Bay TMDL can be instructive. Regulators were given compressed timeframes to develop enforceable plans, and despite original pledges of flexibility, the state and permitted facilities now face federal sanctions if more reductions are not made.
- Most notably, after spending \$150 million to upgrade its sewer systems and deploy green infrastructure, the City of Lancaster is being pressured to sign a consent decree that will cost residents up to \$400 million – not one year after EPA applauded the city for its leadership on water stewardship.
- Pennsylvania's General Assembly enacted legislation that directed the state Department of Environmental Protection to prioritize least-cost compliance options in the development of its 111(d) implementation plan.

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Chairman Whitfield, Ranking Member Rush and members of this committee,

My name is Kevin Sunday, manager of government affairs for the Pennsylvania Chamber of Business and Industry. It is an honor to appear before you today to express the concerns of our members regarding EPA's Clean Power Plan Proposal, specifically as it relates to costs to ratepayers and to reliability. My oral remarks will touch on these points; my written testimony goes into them at some greater length. I have also appended to my written testimony the Pennsylvania Chamber of Business and Industry's comments to EPA's Clean Power Plan docket that were filed last summer.

The Pennsylvania Chamber of Business and Industry is the largest, broad-based business advocacy association in the Commonwealth. Our members are of all sizes, crossing all industry sectors throughout Pennsylvania. While many of the PA Chamber's members are directly involved in extracting, refining, generating, transporting or moving energy, all of our members need energy to operate. Energy is required for every single transaction or exchange of goods or services that contributes to our GDP. Simply put, without affordable, reliable, stable and diverse sources of energy, no business, industry or economy can survive.

Electricity prices in Pennsylvania are, according to U.S. Energy Information Administration data, currently below the national average.¹ Unfortunately, the EPA's proposal threatens Pennsylvania's biggest competitive advantage, as it will drastically change the way Pennsylvania produces and uses energy. This change is likely to come with a significant economic impact to the business community, as well as threaten reliability across the grid. Even more disturbingly, the significant costs of this rule by the EPA's own admission will result in relatively small reductions in global emissions, likely soon to be eclipsed by development abroad. The United States contributes a mere 16 percent of global greenhouse gas emissions², and its power generation sector just 40 percent of that.³ The 30 percent nationwide reduction by power producers that EPA is seeking equates to a temporary and arguably insignificant decrease in greenhouse gasses globally of less than one-half of one percent.

¹ Pennsylvania State Profile and Energy Estimates. U.S. Energy Information Administration. <http://www.eia.gov/state/?sid=PA>

² Total Carbon Dioxide Emissions from the Consumption of Energy (Million Metric Tons). U.S. Energy Information Administration. <http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=90&pid=44&aid=8>

³ National Greenhouse Gas Emissions Data. U.S. Environmental Protection Agency. <http://www.epa.gov/climatechange/ghgemissions/usinventoryreport.html>

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Pennsylvania's Economy and Consumers Depend on Affordable, Reliable Electricity

Pennsylvania has a strong manufacturing sector. With the 8th largest output in the country, Pennsylvania manufacturers provide nearly 600,000 jobs.⁴ Other growing sectors in Pennsylvania include our energy, health care and technology sectors. Each of these industries require a stable, reliable, affordable source of power. For example, one of our members is engaged in processing natural gas and other hydrocarbon by-products from the Marcellus shale. To continue on with their work, which has resulted in the hiring of hundreds of local workers, many of them union tradesmen, the company worked with the local utility to get more power by building a dedicated local substation. To support planned and expected manufacturing and processing facilities in southwest PA, the same local utility is investing tens of millions of dollars in infrastructure projects in the Marcellus shale region to boost voltage beyond existing powerlines currently engineered to support residential load. Several other of our members are increasingly turning to on-site power generation in the form of combined heat and power — not only to cut costs and reduce emissions, but to ensure reliable power. Data servers, schools, hospitals, and the rest of our economy, as well as Pennsylvania's continually aging population, cannot afford for electricity prices to rise sharply, or for electricity service to become unreliable.

Cost considerations must be taken into account in the development of this rule. EPA estimates that the rule will increase electricity prices nationwide by 6% to 7% by 2020, with some locations seeing double-digit rate increases. Compliance costs by the electric sector were estimated by the agency to be between \$5.4 billion and \$7.4 billion in 2020, with final compliance costs in 2030 at nearly \$9 billion. It must be noted that EPA's analysis does not capture the full ripple effect of these costs on the rest of the economy, be they in terms of disposable income, jobs losses or reduced gross domestic product (GDP). NERA Economic Consulting conducted an analysis of the rule, finding that the average U.S. electricity price would increase by 12% per year, with annual compliance costs of at least \$41 billion, based on a forecasted range of \$366 billion to \$479 billion in total costs over the fifteen-year implementation period of EPA's Clean Power Plan proposal.⁵ Pennsylvania's electricity prices, according to NERA, would rise by more than the national average — more than 14%. Such an increase would disproportionately burden those with lower incomes or on fixed incomes.

⁴ Key Industries: Advanced Manufacturing & Materials. Pennsylvania Department of Community and Economic Development. <http://www.newpa.com/business/key-industries/advanced-manufacturing-materials>

⁵ Potential Energy Impacts of the EPA Proposed Clean Power Plan. NERA Economic Consulting, October 2014. http://www.nera.com/content/dam/nera/publications/2014/NERA_ACCCE_CPP_Final_10.17.2014.pdf

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States, stakeholders and EPA must also consider impacts to reliability that would result from implementation of the Clean Power Plan. Currently, PJM Interconnection, the regional transmission organization which serves states including Pennsylvania, is undertaking a reliability analysis of EPA's Clean Power Plan.⁶ The analysis will identify transmission and generation needs due to potential retirements. The PA Chamber urges that this committee review PJM's final reliability analysis in full at the time of its release, which is expected in the near future. In the interim, the PA Chamber requests EPA and this committee continue to keep in mind the reliability considerations identified by the North American Electric Reliability Corporation in a November 2014 report, namely that the assumed heat rate improvements may be difficult to achieve and that reliability may be strained.⁷ As FERC Commissioner Phillip Moeller testified before this very same committee last July, "[as] we have seen with the implementation of EPA's mercury rule (MATS), load pockets matter because the laws of physics trump written words. [...] Just as [FERC] does not have the expertise in regulating air emissions, I would not expect the EPA to have expertise on the intricacies of electric markets and the reliability implications of transforming the electric generation sector."⁸ As such, EPA and states must rely on the existing agencies that have been tasked with managing and maintaining reliable electric services, including FERC, NERC and RTOs/ISOs such as the PJM Interconnection.

EPA's Proposed 111(d) Target for Pennsylvania: Cost, Reliability Concerns Abound Due to Renewable, Energy Efficiency Expectations

In April 2014, prior to EPA unveiling the Clean Power Plan for comment, the Pennsylvania Department of Environmental Protection last year, entitled "Recommended Framework for the Section 111(d) Emissions Guidelines Addressing Carbon Dioxide Standards for Existing Fossil Fuel-Fired Power Plants."⁹ Among the considerations DEP put forward to EPA were that in the event "outside the fence line" projects or sources take an action to avoid carbon emissions or achieve an environmental

⁶ "PJM will use the results of the economic analysis to conduct a reliability analysis to determine transmission needs resulting from potential generator retirements." PJM Economic Analysis of the EPA Clean Power Plan Proposal Executive Summary, p. 6. <https://www.pjm.com/-/media/documents/reports/20150302-pjm-interconnection-economic-analysis-of-the-epa-clean-power-plan-proposal.ashx>

⁷ Potential Reliability Impacts of EPA's Proposed Clean Power Plan. North American Electric Reliability Corporation, Nov. 2014. http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential_Reliability_Impacts_of_EPA_Proposed_CPP_Final.pdf

⁸ Written Testimony of FERC Commissioner Phillip D. Moeller Before the Committee on Energy and Commerce Subcommittee on Energy and Power United States House of Representatives, July 29, 2014. <http://www.ferc.gov/CalendarFiles/20140729091755-Moeller-07-29-2014.pdf>

⁹ Recommended Framework for the Section 111(d) Emissions Guidelines Addressing Carbon Dioxide Standards for Existing Fossil Fuel-Fired Power Plants, Pennsylvania Department of Environmental Protection. April 10, 2014. <http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/files/PADEP.pdf>

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benefit, the owner or operator of that project be responsible for compliance, not the end user of the credit such as a power plant. Ultimately, though, DEP urged EPA to “establish targets based upon actions that can be taken directly by and at existing sources,” with creditable, outside the fence options a means for compliance, but not used in the calculation of targets. The proposed framework would have also allowed for emissions averaging among units and urged reforms to the New Source Review process. Unfortunately, while its recommendations are worthy of consideration, the whitepaper does not appear to have swayed EPA in its crafting of the Clean Power Plan.

In its comments to the agency, the PA Chamber raised a number of concerns regarding EPA's Clean Power Plan. Among these were the implications of Building Block 1 anticipating heat rate improvements at coal-fired power plants, regardless of whether or not the energy market supports such investments or whether potential New Source Review triggers would be hit as a result of pursuing such improvements. At the time of writing those comments, EPA's 111(b) rule was due in January 2015. Since that time, however, EPA announced it was delaying releasing the 111(b) rule for new power plants, which must be finalized before the 111(d) program for existing power plants is promulgated. There also remains considerable uncertainty over whether or not an existing power plant that undertakes a significant reconstruction to achieve the expected heat rate improvements would be subject to either or both of the 111(b) and 111(d) rules.

Pennsylvania has a restructured power generation market in which electric generation companies must compete on price. As such the state has been placed in a difficult position with implementing EPA's proposal. The PA Chamber noted in its comments to EPA's docket on the Clean Power Plan the concerns of its members regarding the reality of Pennsylvania's deregulated energy market and the expectation that the state find a way to dispatch natural gas units at a minimum 70% capacity factor (Building Block 2). The state's Public Utility Commission expressed similar concerns in its comments to EPA last summer, noting that “EPA has not given sufficient consideration to the impacts its proposal will have on organized electricity markets and the challenges that the proposal presents to system reliability and the economy.”¹⁰ The PA PUC goes on to note that “the EPA proposal relies on the faulty assumption that all states can require the re-dispatch of natural gas units. That is not the case in Pennsylvania, a restructured state.” In PJM's economic analysis of the 111(d) proposal, the RTO notes that in a year in which natural gas prices

¹⁰ Comments of the Pennsylvania Public Utility Commission Before the United States Environmental Protection Agency – Carbon Pollution Emission Guidelines for Existing Stationary Sources Electric Utility Generating Units EPA-HQ-OAR-2013-0602, Dec. 1, 2014. http://www.puc.pa.gov/Electric/pdf/PUC_EPA_Comments120114.pdf

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were at their lowest point in memory (and thus natural gas-fired power plants were at their most competitive on an economic basis), "Pennsylvania's natural gas combined-cycle resources operated at a 59 percent capacity factor in 2012"¹¹ – a far cry from the 70% expectation of Building Block 2. Further, power plants in the PJM region compete on price. If on a purely economic basis natural gas plants have not been able to achieve a 70% capacity factor, it follows then that the only way to achieve such a capacity factor is in the form of some market-distorting mechanism that would increase the cost of electricity to consumers.

Such are the issues surrounding the first two building blocks. Even if, however, such concerns are addressed, the remaining challenge to Pennsylvania's regulators and industries would be substantial, given how much EPA expects Pennsylvania to increase its renewable and energy efficiency requirements. Pennsylvania's total reduction in greenhouse gas emissions from fossil fuel-fired power plants is 479 lbs/MWh, based on a calculated 2012 starting point of 1,627 MWh and a 2030 goal of 1,052.¹² As the following table shows, approximately 71% of this reduction occurs "outside the fenceline" of power plants in the form of increased renewable portfolio standards and energy efficiency requirements. This outsized expectation appears to be predicated on Washington D.C.'s RPS. As many stakeholders including the PA Chamber have noted, there are significant questions surrounding the legality of EPA and DEP's ability to regulate beyond the fenceline. Such increases in mandates can only happen via legislation, not through the actions of state or federal environmental agencies, nor through the actions of power plants. Further, it remains unclear if fossil fuel-fired plants themselves would be liable for non-compliance in the event a state is unable to implement such drastically expanded renewable mandates and energy efficiency measures.

TABLE 1: Clean Power Plan GHG Emission Rate Reductions By Building Block, Pennsylvania

	2012 Fossil Fuel GHG Emission Rate	Building Block 1	Building Block 2	Building Block 3	Building Block 4	2030 Fossil Fuel GHG Emission Rate Goal
MWh	1,627	-73	-65	-236	-105	1052
Percent of total reduction		15%	13.5%	49%	22%	

¹¹ PJM Economic Analysis of the EPA Clean Power Plan Proposal Executive Summary, PJM Interconnection. March 2, 2015. <https://www.pjm.com/-/media/documents/reports/20150302-pjm-interconnection-economic-analysis-of-the-epa-clean-power-plan-proposal.ashx>

¹² Technical Support Document (TSD) for the CAA Section 111(d) Emission Guidelines for Existing Power Plants Docket ID No. EPA-HQ-OAR-2013-0602: Goal Computation Technical Support Document. U.S. Environmental Protection Agency, Office of Air and Radiation, June 2014. <http://www2.epa.gov/sites/production/files/2014-06/documents/20140602tsd-goal-computation.pdf>

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As the PA Chamber noted in its comments to EPA last summer, EPA's expectations for Pennsylvania's building block 3 are disproportionate to that of other states, with Pennsylvania expected to add more than 30,000 Giga-watt hours of renewable generation by 2030 – the second most of any state in the U.S. and an almost 800 percent increase over current levels. As Table 2 shows, Pennsylvania's target for increasing renewable energy requirements is significantly higher than any other state in its region, despite EPA's assertion that states within a given region have similar levels of renewable energy or the potential for it. This is the apparent result of EPA assigning to Pennsylvania the highest expected annual growth rates for the renewable energy Building Block – 17% - and starting the projections from a year in which the renewables percentage of Pennsylvania's portfolio was higher than surrounding states. EPA has also incorporated Washington D.C.'s renewable electric purchasing mandates into the east central region's renewable energy generation building block – “even though Washington D.C. is not a state and does not have any power generation.” Moreover, as U.S. Senator Bob Casey noted in his comments to EPA, “among all states, Pennsylvania ranks second to last in terms of technical potential for meeting the overall needs of its own energy sector through renewable generation.”¹³

The PA Chamber also noted in its comments to EPA that “wind and solar at present cannot be dispatched at times of peak demand, such that ‘increased reliance on these resources places additional stress on the system.’”¹⁴ Over the past two winters in the PJM region, peak winter demand days have come closer and closer to matching peak summer demand days. Historically, demand for electricity peaked in the summer – the season in which solar resources can be expected to produce the most. If, however, demand begins to peak in the winter, when weather is inclement, an overreliance on solar resources could spell reliability implications across the region.

¹³ Comment letter to Honorable Gina McCarthy, Office of Senator Robert P. Casey, Jr. Nov. 20, 2014.

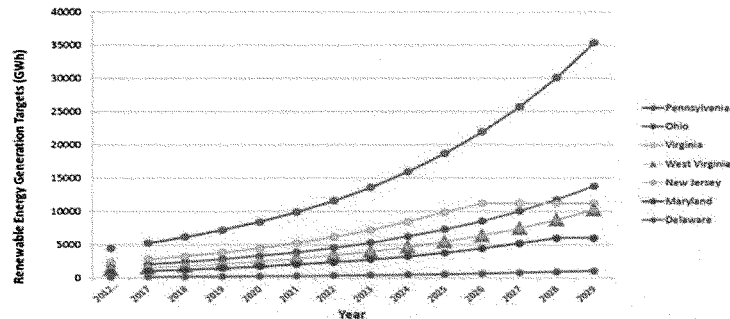
<http://www.casey.senate.gov/download/comments-on-epa-clean-power-plan>

¹⁴ Pennsylvania Chamber of Business and Industry Comments RE: Docket ID EPA-HQ-OAR-2013-0602, July 28, 2014.

http://www.pachamber.org/advocacy/priorities/energy_environmental/environmental/testimony/pdf/PA_Chamber_EPA_111d_Pittsburgh_Comments_072514.pdf

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TABLE 2: Clean Power Plan Renewable Energy Targets (East Central Region)



Further, nuclear power, itself a carbon-free resource that does not have the intermittency of solar and wind, is undervalued and treated inequitably in EPA's proposed Building Blocks. The only role of nuclear, insofar as the 111(d) proposal is concerned, is that states make an effort to preserve existing nuclear facilities beyond their expected lifetimes by incorporating 5.8% of a state's existing capacity and a 90% capacity factor in its compliance plans as EPA's accounted for in the development of each state target. However, there is no logical basis to apply this 5.8% average to every state's formula who has nuclear; nor does it provide any incentive for states to preserve nuclear capacity at risk. At risk nuclear plants vary state to state, largely dependent upon whether they operate as a merchant unit in a competitive market or within as a unit within a vertically integrated utility in a regulated market. As a result, EPA improperly represented at risk nuclear capacity in setting the standards for states that have existing nuclear capacity, by applying a uniform 5.8% in each state regardless of whether a specific unit in a state is at risk for an early closure.

It is difficult to testify with certainty what the economic impacts in Pennsylvania of EPA's expectations for renewables and energy efficiency will be, given that EPA's final proposal may recalculate the expectations of different states and that Pennsylvania may ultimately develop a plan that expects a different amount of renewable generation and energy efficiency requirements. It should be noted, though, that the cost of existing requirements are substantial and continue to escalate. As Table 3 below shows clearly, the costs of compliance with the state's Alternative Energy Portfolio Standards Act have increased exponentially. This legislation was enacted in 2004, outlining specific percentages of electricity sold in Pennsylvania be generated from certain alternative sources, subcategorized as Tier I (solar, wind,

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“low-impact” hydro, geothermal, and biomass) or Tier II (waste coal, distributed generation, large-scale hydro, municipal solid waste or landfill-to-gas, and wood pulp), with a specific carve-out for solar photovoltaic.¹⁵

Over a five year period between 2008 and 2013, total AEPS requirements increased from 5.7% to 10.2%, or slightly less than double. However, the costs of compliance increased from slightly more than \$1 million in 2008 to more than \$54 million in 2013.¹⁶ Besides this significant increase in cost, it should be noted that due to the manner in which state government structured the carve-out and accompanying subsidies, the average price of the solar renewable energy credit collapsed by more than half over that period. Some individual operators were being paid as little as \$5, compared to nearly fifty times that amount just a few years prior.¹⁷ Meanwhile, the weighted average credit price for Tier I resources nearly doubled. As the price of the credits escalated along with the percentage requirements, consumers and businesses across Pennsylvania have had to pay significantly increased costs.

TABLE 3: Alternative Energy Portfolio Standards Costs of Compliance

Compliance Year	Cost of Compliance	Tier I Requirement	Weighted Avg. Credit Price	Tier II Requirement	Weighted Avg. Credit Price	Solar PV Carveout	Weighted Avg. Credit Price
2008	\$1,153,158	1.5%	\$4.48	4.2%	\$0.66	0%	\$230
2009	\$2,204,613	2.0%	\$3.65	4.2%	\$0.36	0.01%	\$260.19
2010	\$3,443,241	2.5%	\$4.77	4.2%	\$0.32	0.01%	\$325
2011	\$13,452,920	3.0%	\$3.94	6.2%	\$0.22	0.02%	\$247.82
2012	\$31,223,149	3.5%	\$5.23	6.2%	\$0.17	0.03%	\$180.39
2013	\$54,439,440	4.0%	\$8.31	6.2%	\$0.22	0.05%	\$109.23

For estimates of costs in future years, the PA Chamber highlights the findings of Suffolk University in 2012 which estimated, in a variety of scenarios, that when Pennsylvania, under the Alternative Energy Portfolio Standards Act, arrives at the final 2021 mandate of 18% of total electricity sales, the cost of electricity statewide will rise by an average of \$2.55 billion, with a high of \$3.24 billion.¹⁸ Translated to costs to consumers and businesses, the average residential bill in Pennsylvania would increase by \$170 per year, the average commercial business by an average of \$1,125 per year, and the average industrial

¹⁵ Alternative Energy Portfolio Standards Act (Act 213 of 2004).
<http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2004&sessInd=0&act=213>

¹⁶ Various annual AEPS reports. Pennsylvania Public Utility Commission.
http://paeaps.com/credit/background_information.do?todo=background

¹⁷ Solar business still sunny but energy credits cast shadow over Pa. sales. Scranton Times-Tribune, Sept. 29, 2013.

¹⁸ The Economic Impact of Pennsylvania's Alternative Energy Portfolio Standard. The Beacon Hill Institute at Suffolk University, December 2012. <http://www.beaconhill.org/BHISudies/PA-AEPS2012/PA-AEPS-study-BHI-Dec-2012.pdf>

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business by \$26,830 per year. As a result of these higher expenditures on utility bills, disposable income falls by more than \$1.6 billion per year, leading to a loss of more than 17,000 jobs.

Another significant piece of legislation enacted in Pennsylvania prior to the Clean Power Plan's 2012 benchmark year deals with energy efficiency. Act 129 of 2008¹⁹ tasked the state's regulated electric distribution utilities with developing and implementing plans to reduce electricity consumption by their customers. Utilities who fail to do so could be fined up to \$20 million. Electric distribution companies are eligible to receive cost recovery from surcharges assessed to the same customer classes (which, broadly, are residential, small commercial and industrial and large commercial and industrial) where demand reductions are occurring. Act 129 mandated each utility find a way for its customers to reduce electric consumption by 1% by 2011, 3% by 2012 and 4.5% by 2013, compared to a 2009 baseline.

A PA PUC report issued in 2014 identified the total costs of Act 129 requirements for the period of 2009 through 2013 as more than \$1.7 billion.²⁰ In 2012, the PA PUC set new incremental targets for consumption reduction for each electric distribution company, ranging from 1.6% to 2.9%. Spending by electric distribution companies to comply with energy efficiency requirements is capped at 2% of their 2006 total revenue, or approximately \$245 million per year. It can then be reasonably projected that over the next three years, utilities will spend roughly an additional \$735 million to comply with the new targets – all of which will be borne by ratepayers. According to a 2014 analysis, Pennsylvania's current energy efficiency requirements obligated the fifth-highest spending for such mandates in the nation.²¹

Customer surcharges to implement the mandated reductions also vary greatly by electric distribution company. Data provided to us by the Industrial Energy Consumers of Pennsylvania shows that Act 129 requirements add more than \$43,000 to the monthly electricity bill of an average mid-sized steel manufacturer in one utility service territory. Statewide, the average mid-sized office building pays anywhere from \$181 to \$470 more per month as a result of the mandates. Larger office buildings and hospitals are paying two to three times those amounts, and some larger industrials are paying more than \$28,000 a month.

¹⁹ Act 129 of 2008. <http://www.legis.state.pa.us/WU01/LI/LI/US/HTM/2008/0/0129.HTM>

²⁰ Act 129 Statewide Evaluator Final Annual Report – Phase I: June 1, 2009 – May 31, 2013. Pennsylvania Public Utility Commission, March 4, 2014. <http://www.puc.pa.gov/pedocs/1274547.pdf>

²¹ Summary of Electric Utility Customer-Funded Energy Efficiency Savings, Expenditures and Budgets. The Edison Foundation Institute for Electric Innovation, March 2014. http://www.edisonfoundation.net/iei/Documents/InstElectricInnovation_USEESummary_2014.pdf

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Recent policy decisions at the state and federal level have resulted in an environment in which power generators must compete against demand response and energy efficiency measures, which are treated as “capacity” just like a power plant – except for the fact that such measures do not have to comply with environmental regulations or that a manufacturer cannot operate a plant on “nega-watts,” or avoided power usage. It should be noted that ongoing litigation surrounding FERC Order 745 and the ability for demand response resources to be compensated in the capacity markets presents additional uncertainty regarding the future ability of policymakers to use demand response as a means to reduce emissions. Finally, manufacturing, commercial, industrial and even many residential customers across the state already have significant incentive to reduce their power costs and consumption. Commercial and industrial facilities in particular have invested considerable effort and resources to reduce costs and increase efficiency. As such, and given the extensive costs being borne by industrial consumers, some stakeholders in the large industrial and commercial category are looking for ways to extricate themselves from the Act 129 energy efficiency requirements entirely.

Given the tremendous costs already incurred to ratepayers, Pennsylvania must be credited with the reductions it has already made regarding energy efficiency. As with the Clean Power Plan as a whole, the 2012 baseline in building block 4 ignores the steps taken and costs borne by Pennsylvanians to reduce electricity consumption. Further, the current 2% spending cap on electric distribution companies for energy efficiency and demand response program would not yield anywhere close to the reductions in electricity consumption that EPA expects of Pennsylvania.

Pennsylvania is not the only state to raise questions about these specific building blocks or the Clean Power Plan as a whole. An analysis of state comments to EPA’s docket conducted by the U.S. Chamber of Commerce’s Institute for 21st Century Energy²² showed that:

- 32 states raised concerns about the legality of the rule;
- 32 states commented with concerns about reliability;
- 34 states have concerns with the flexibility and achievability of building block 1, 35 states with building block 2, 20 states with building block 3 and 17 states with building block 4; and
- 34 states included concerns about the rule’s accelerated timeline for finalization and implementation

²² In Their Own Words: A Guide to State’s Concerns Regarding the Environmental Protection Agency’s Proposed Greenhouse Gas Regulations for Existing Power Plants. U.S. Chamber of Commerce Institute for 21st Century Energy, Jan. 22, 2015. <http://www.energyxxi.org/sites/default/files/FINAL%20EPA%20CPP%20Report%20FINAL.pdf>

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Promises of Flexibility, Threats of Litigation and Federal Enforcement - A Useful Comparison Between the Clean Power Plan and the Chesapeake Bay TMDL

The experience of Pennsylvania when it comes to being forced to comply with federal environmental mandates, particularly those brought about by litigation or furthered along by Presidential Executive Order, can be instructive in policy considerations surrounding the Clean Power Plan. In particular, the PA Chamber would highlight for this committee the regulatory obligations surrounding restoration of the Chesapeake Bay.

In 1999, the Environmental Protection Agency, states in the Chesapeake Bay watershed, and the city of Washington, D.C. entered into a consent decree with a number of environmental groups. The various governments agreed to, at a cost of millions of dollars, take a series of actions to reduce pollution in the Bay, and a Total Maximum Daily Load (TMDL) would be established only in the case that pollutant targets were not met.

In 2008, additional litigation was filed against EPA by environmental groups to compel the federal agency to issue a TMDL for Bay states, as well as establish a strict and ambitious schedule for its implementation. In May 2009, President Barack Obama signed an Executive Order²³ described by the Washington Post as a “dramatic step [...] to] empower the federal Environmental Protection Agency to set a more demanding timetable [for Bay restoration] and penalize states that fail to meet it.”²⁴ In 2010, the TMDL would be issued just seven months after EPA settled with the environmental groups, without input from the public or affected states. The burden assigned to Pennsylvania was substantial, with mandated reduction targets of nitrogen, phosphorus and sediment that are either the most stringent or second-most stringent of all Bay states. Total costs were estimated by DEP at more than \$8 billion for Pennsylvania alone.²⁵

Pennsylvania was obligated to make substantial legal and policy choices in a compressed timeframe – slightly more than six months. EPA also changed its pollution targets midway through development of the implementation plans, further placing a burden on states and stakeholders. There remain significant

²³ Chesapeake Bay Protection and Restoration Executive Order. The White House, May 12, 2009.

<https://www.whitehouse.gov/the-press-office/Executive-Order-Chesapeake-Bay-Protection-and-Restoration>

²⁴ Obama Orders EPA to Take the Lead in Chesapeake Bay Cleanup Efforts. Washington Post, May 13, 2009.

<http://www.washingtonpost.com/wp-dyn/content/article/2009/05/12/AR2009051202469.html>

²⁵ Pennsylvania's Chesapeake Bay Tributary Strategy. Pennsylvania Department of Environmental Protection, December 2004.
<http://www.elibrary.dep.state.pa.us/dsweb/Get/Version-45267/3900-BK-DEP1656.pdf>

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questions about EPA's model used to identify pollutant contributions and reductions from various sources, specifically if the model appropriately characterizes improvements to water quality from implementing a variety of best management practices.

If reductions identified in the watershed implementation plans are not achieved, EPA will subject the states and their industries to federal sanctions in the form of "backstop allocations," or forced reductions from "areas where EPA has the federal authority to control pollution allocations through NPDES permits, including wastewater treatment plants, stormwater permits and animal feeding operations."²⁶ Note that in the development of the implementation plans, EPA originally pledged to states they would be afforded flexibility.²⁷

One leader of an environmental group that had filed the litigation leading to the promulgation of the TMDL would later say, "Nothing in the TMDL dictates that agriculture do anything one way or another [...] States and local governments worked together with a number of federal agencies to develop this Clean Water Blueprint for the bay. It's hardly a mandate being imposed on high down to the states."²⁸

These remarks are similar to those made by proponents of the Clean Power Plan: no one specific industry is being forced to act in any certain way, and states are being afforded flexibility and encouraged to work with one another. In truth, however, state governments, industrial and local government sectors, and, very importantly, individually permitted facilities will face sanctions if EPA finds that insufficient progress is being made with respect to the Chesapeake Bay TMDL. All parties, both public and private, must also work under continual threat of additional litigation by environmental groups that would further accelerate compliance timeframes or assess additional pollution reduction mechanisms. This was the case in 2012 when two environmental groups filed litigation in federal court to have nutrient credit trading mechanisms being used by states to be stripped out of the TMDL.²⁹ While the suit was ultimately dismissed, it remains unclear if the Clean Water Act specifically authorizes nutrient credit trading, resulting in persistent threats of litigation from NGO's.

²⁶Chesapeake Bay TMDL Summary, U.S. Environmental Protection Agency.

http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/FinalBayTMDL/BayTMDLExecutiveSummaryFINAL122910_final.pdf

²⁷ See August 10, 2010 letter to State Secretaries outlining development of sediment WIPs,

http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/Ches_Bay_Sediment_Letter.PDF

²⁸Why Are 20 Far Away States Trying to Block the Cleanup of the Chesapeake Bay? ThinkProgress.org, April 16, 2014.

<http://thinkprogress.org/climate/2014/04/16/3363281/states-block-chesapeake-cleanup/>

²⁹ Suit Opposes Chesapeake Bay Pollution Trading. Associated Press, Oct. 18, 2012. <http://www.wbac.com/story/19727471/suit-opposes-chesapeake-bay-pollution-trading>

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The PA Chamber would like the members of this committee to also note the recent experience of the City of Lancaster and its local business community. The city took a leadership role in developing a green infrastructure plan that was hailed by EPA. "Cities like Lancaster are leading the way in creating cost-effective and innovative solutions to the stormwater challenges we face today," said EPA Regional Administrator Shawn M. Garvin in March 2014. "By keeping rain water from coming into contact with pollution in the first place, green infrastructure improves water quality while making communities more livable."³⁰ EPA also made note of the city's efforts in a 2014 economic case study.³¹ The city spent \$150 million in public sewer upgrades (the cost of which was borne by ratepayers) and millions more in "green infrastructure" such as tree plantings, rain gardens, rain barrels and porous pavement. Despite the significant investments and public applause from EPA just one year ago, Lancaster's city officials are now finding themselves in a bind. EPA is pressuring the city to sign off on a consent decree to control stormwater even further – a measure which, according to the city's mayor in February, "could cost [ratepayers] \$100 million to \$400 million" more.³²

Pennsylvania's Legislature Made a Bipartisan Effort to Put Cost and Reliability Considerations at the Forefront; Congress Should Do the Same

Last session, legislation authored by State Representative Pam Snyder (D-Greene County) and strongly supported by the PA Chamber, various organized labor groups and many other stakeholders was enacted as Act 175 of 2014. Known as the Greenhouse Gas Regulation Implementation Act³³, the bill passed with substantial bipartisan support: 144 of 203 members in the state House of Representatives and 31 of 49 State Senators voted for the bill on final passage. The legislation was the first time the state's General Assembly explicitly spoke about how state government should proceed in regulating carbon emissions in the state and directed the Pennsylvania Department of Environmental Protection, who will be charged with drafting a state plan for 111(d) and submitting it to EPA, to proceed in a public, transparent fashion in its deliberations. DEP must also "prioritize the components of the State plan based on a least-cost

³⁰ Going Green Will Save Lancaster in Controlling Storm Water. EPA Region III, March 4, 2014. <http://yosemite.epa.gov/opa/admpress.nsf/0/69A9EB063ADD242485257C9100629C08>

³¹ The Economic Benefits of Green Infrastructure: A Case Study of Lancaster, PA. U.S. Environmental Protection Agency, February 2014. <http://owpubauthor.epa.gov/infrastructure/greeninfrastructure/upload/CNT-Lancaster-Report-508.pdf>

³² City worries EPA will mandate additional stormwater controls costing taxpayers \$100-400 million. Lancaster Online, Feb. 25, 2015.

³³ PA Greenhouse Gas Regulation Implementation Act (Act 175 of 2014). <http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2013&sInd=0&body=H&type=B&bn=2354>

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compliance approach to benefit consumers of electricity” and “take into consideration the necessity and value to having a diverse generation fleet to ensure electric reliability” in Pennsylvania.

Prior to DEP's submission of its draft state plan to EPA, the state legislature must review the plan in a timely manner and place on its legislative calendar a resolution concurring with the plan. If either chamber of the General Assembly disapproves the resolution, DEP may not transmit its plan to EPA. The General Assembly, should it disapprove the resolution, will provide DEP with the reasons for disapproval that DEP must then address in its revised plan. The legislation provides for Pennsylvania regulators to request an extension from EPA in the event of an impasse.

This legislation was necessary given that the components of EPA's proposal and DEP's implementation of it will impact areas of the economy far beyond the environmental agencies' traditional boundaries. As Pennsylvania's regulators and stakeholders work through the process of unpacking EPA's final Clean Power Plan regulation and drafting a plan to implement it, they will be expected to do so at a time of great uncertainty due to on-going and expected litigation, not to mention numerous economic, legal and regulatory challenges. As such, the PA Chamber supports Energy and Power Subcommittee Chairman Ed Whitfield's "Ratepayer Protection Act" as the concepts outlined in the legislation are worthy of consideration. The draft legislation appropriately puts EPA's proposal on hold until litigation surrounding it is resolved, as well as exempting any state from a state or federal plan in the event such a plan would have a significant adverse affect on ratepayers.

On behalf of the members of the Pennsylvania Chamber of Business and Industry, thank you again for the opportunity to testify regarding our concerns concerning the EPA Clean Power Plan and its impacts to ratepayers and reliability.

Sincerely,



Kevin Sunday
 Manager, Government Affairs
 Pennsylvania Chamber of Business and Industry

APPENDIX A

Pennsylvania Chamber
of Business & Industry

Comments to EPA

RE: Docket ID EPA-HQ-OAR-2013-0602



417 Walnut Street
Harrisburg, PA 17101
717 255-3252 / 800 225-7224
FAX 717 255-3298
www.pachamber.org

The Honorable Gina McCarthy
Environmental Protection Agency
EPA Docket Center (EPA/DC), Mailcode 28221T
Attention Docket ID No. OAR-2013-0602
1200 Pennsylvania Avenue, NW
Washington, DC 20460

July 28, 2014

RE: Docket ID EPA-HQ-OAR-2013-0602

Dear Administrator McCarthy,

The Pennsylvania Chamber of Business and Industry is the largest, broad-based business advocacy association in the Commonwealth. Our members are of all sizes, crossing all industry sectors throughout Pennsylvania. Thank you for the opportunity for the PA Chamber and its members to comment the Environmental Protection Agency's proposed plan to regulate greenhouse gas emission from existing power plants.

While many of the PA Chamber's members are directly involved in extracting, refining, transporting or moving energy, all of our members need energy to operate. Energy inputs are required for every single transaction or exchange of goods or services that contributes to our GDP. Simply put, without affordable, reliable, stable and diverse sources of energy, no business, industry or economy can survive.

For many years, Pennsylvania's diverse portfolio of energy resources, including coal, oil, gas, nuclear, solar, wind, hydropower and other renewable, as well as its competitive electricity market, has fostered an environment that put Pennsylvania in a position to compete with other states and other countries to retain, expand and attract businesses. Because of Pennsylvania's leadership in establishing competitive electricity markets, as well as being second in the nation for total power generation, natural gas production and nuclear assets, and fourth in the nation in coal production, wholesale electricity prices have trended downward significantly in recent years, with a more than 50% decrease between 2008 and 2012¹.

We are also a net exporter of both natural gas and electricity. This has given Pennsylvania an unparalleled competitive advantage and helps us compete despite the challenges presented of the state's business tax structure². Energy prices are one of the reasons that in 2013³ more new corporate facilities opened their

¹ Pennsylvania State Energy Plan. Office of Governor Tom Corbett, January 2014. <http://energy.newpa.com/wp-content/uploads/2014/01/PA-State-Energy-Plan-Web.pdf>

² 2014 State Business Tax Climate Index. Tax Foundation, Oct. 9, 2013. <http://taxfoundation.org/article/2014-state-business-tax-climate-index>

³ Governor Corbett Announces Pennsylvania Ranks First in Northeast Region for New, Expanded Corporate Facilities. Office of Governor Tom Corbett, March 5, 2014. <http://www.newpa.com/newsroom/pennsylvania-ranks-first-northeast-region-2013>

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doors in PA than the rest of the northeastern states combined and one of the biggest reasons our present unemployment rate is significantly less than the national average and below pre-recession levels⁴.

Industry in Pennsylvania and across the United States has taken great strides to reduce emissions of all pollutants, including greenhouse gasses. The power generation sector in Pennsylvania has reduced greenhouse gas emissions by 14% since 2005⁵. In fact, America led the world in reducing greenhouse gas emissions over that time period⁶. Industry in the state has also, since 2008, reduced emissions of SO₂ by 68%, NO_x by 30% and VOCs by 21%⁷. These reductions are having a demonstrated impact on air quality, with DEP forecasting fewer and fewer severe air quality alerts each year⁸ – a significant development considering DEP announced two years ago it added eight additional regions, for a total of 13 regions.

Unfortunately, the EPA's proposal threatens Pennsylvania's biggest competitive advantage, which is low energy prices. The proposal threatens to drastically change the way Pennsylvania produces and uses energy. This change is likely to come with a significant economic impact to the business community, as well as threaten reliability across the grid. Even more disturbingly, the significant costs of this rule by the EPA's own admission will result in relatively small reductions in global emissions, likely soon to be eclipsed by development abroad. The United States contributes a mere 16 percent of global greenhouse gas emissions⁹, and its power generation sector just 40 percent of that¹⁰. The 30 percent nationwide reduction by power producers that EPA is seeking equates to a temporary and arguably insignificant decrease in greenhouse gasses globally of less than 2 percent.

Pennsylvania is part of the PJM Interconnection, a grid that provides power to 61 million Americans in 13 states and the District of Columbia¹¹. This past winter, the grid came close to a catastrophic failure as a multitude of conditions threatened to disrupt the grid, including historic demand, transmission constraints and scarcity of fuels. There were at the time 183 giga-watts (GW) of installed capacity in the grid, but at any given time some percentage of that may be unavailable due to maintenance, repair or fuel supply¹². On January 7, 2014, available power totaled slightly more than 142 GW. Demand peaked that day at 141 GW¹³, meaning the grid was very close to failure. By the end of next year, we will have seen more than 5

⁴ Pennsylvania's Workforce Statistics. Department of Labor & Industry, April 2014.

<http://www.portal.state.pa.us/portal/server.pt?open=514&objID=1216762&mode=2>

⁵ Electric Power Industry Emissions Back to 1990, Pennsylvania. U.S. Energy Information Administration, April 1, 2014. <http://www.eia.gov/electricity/state/pennsylvania/xls/sept07PA.xls>

⁶ Some fracking good news, *The Economist*, May 25, 2012.

<http://www.economist.com/blogs/schumpeter/2012/05/americas-falling-carbon-dioxide-emissions>

⁷ 2012 Natural Gas Emissions Inventory. Pennsylvania Department of Environmental Protection, Air Quality Technical Advisory Committee, April 3, 2014. http://www.dep.state.pa.us/dep/subject/advcom/aqtac/2014/4-3-14/Marcellus_AQTAC_Unconventional_Gas_03-13-2014.pdf

⁸ Action Days. Pennsylvania Department of Environmental Protection, Bureau of Air Quality.

http://www.ahs2.dep.state.pa.us/aq_apps/aqpartners/code_red.asp

⁹ Total Carbon Dioxide Emissions from the Consumption of Energy (Million Metric Tons). U.S. Energy Information Administration. <http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=90&pid=44&aid=8>

¹⁰ National Greenhouse Gas Emissions Data. U.S. Environmental Protection Agency.

<http://www.epa.gov/climatechange/ghgemissions/usinventoryreport.html>

¹¹ About PJM. PJM Interconnection. <http://www.pjm.com/about-pjm.aspx>

¹² Testimony of F. Stuart Bresler, III, on behalf of PJM Interconnection, before the Pennsylvania Senate Consumer Protection and Professional Licensure Committee, April 1, 2014.

¹³ *Ibid.*

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GW of coal-fired power plant shutdowns¹⁴. EPA estimates an additional 4.6 GW will retire as a direct result of the greenhouse gas rule in coming years¹⁵. If recent history is any indication, there may be more retirements than anticipated.

While a number of new power plants are in various stages of development, significant questions remain if the grid will be in a position to deal with the scenario we faced this past January. Historically, demand in PJM peaked during the summer, when demand for natural gas was low. Because the EPA's plan expects that natural gas be dispatched over other sources, the PA Chamber questions if existing transmission and supply constraints will be eased in time for Pennsylvania to comply with this rule.

EPA's draft rule proposes a number of approaches for Pennsylvania to achieve a very aggressive reduction target of 32% below 2012 levels¹⁶, based on a number of assumptions, including that existing plants can (and will) become significantly more efficient, that existing and new natural gas plants can (and will) run significantly more often, and that Pennsylvania can (and will) deploy considerable renewable assets and energy-efficiency measures beyond those already required by law. Each of these so-called "building blocks" will come with a cost. There remain significant questions as to the ability of Pennsylvania to comply with this target without additional shutdowns of coal-fired facilities. The proposal put forward by EPA is unlike any other emissions reduction strategy ever developed, and we believe the sort of approach envisioned in a recent Pennsylvania DEP whitepaper¹⁷, where achievable reductions at fossil-fuel generating plants are identified, with so-called "outside the fence" measures made available – but not required – to achieve compliance, is a more appropriate strategy.

We urge EPA to give Pennsylvania a realistic emissions reduction target, as well as ensure Pennsylvania is given credit for the significant emissions reductions due to previous and future plant retirements, power plant fuel conversions, energy efficiency requirements and alternative energy portfolio mandates. The PA Chamber also urges that innovative strategies being adopted by businesses across the state, such as combined heat and power systems and smart meters, be recognized for their efforts in emissions reductions. Finally, the PA Chamber urges that the EPA extend the public comment period by a minimum of 60 days, given the breadth and complexity of the rulemaking, and that EPA hold additional public hearings and public question-and-answer sessions across the country.

Further Discussion Regarding EPA's Proposal and Implications to Pennsylvania's Economy

On June 25, 2013, President Barack Obama issued a Presidential Memorandum, "Power Sector Carbon Pollution Standards,"¹⁸ tasking the federal Environmental Protection Agency (EPA) with reducing

¹⁴ Pennsylvania Electric Power Generation Association Presentation to the Greater Reading Chamber, Feb. 2014. http://www.epga.org/documents/GreaterReadingChamberPresentation-FEB2014_000.pdf

¹⁵ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units. Environmental Protection Agency, June 2, 2014. <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602proposal-cleanpowerplan.pdf>

¹⁶ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units. Environmental Protection Agency, June 2, 2014. <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602proposal-cleanpowerplan.pdf>

¹⁷ Recommended Framework for the Section 111(d) Emissions Guidelines Addressing Carbon Dioxide Standards for Existing Fossil Fuel-Fired Power Plants. Pennsylvania Department of Environmental Protection, April 10, 2014. <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-100322/2700-UK-DEP4446%20combined.pdf>

¹⁸ Presidential Memorandum -- Power Sector Carbon Pollution Standards. Office of the White House Press Secretary, June 25, 2013. <http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards>

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greenhouse gas pollutants from power plants. The Memorandum directed EPA to develop two separate rulemakings: one under Section 111(b) of the Clean Air Act¹⁹, entitled “Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units” and another under section 111(d) of the Clean Air Act, involving greenhouse gas emissions for modified, reconstructed and existing power plants.

Section 111(b) of the Clean Air Act requires EPA to issue New Source Performance Standards for categories of sources that are determined to cause, or contribute significantly to, air pollution which can reasonably be anticipated to endanger public health or welfare, using “best systems of emissions reductions” or BSER to reduce emissions of such pollution. On January 8, 2014, EPA published in the Federal Register a notice announcing proposed rules for new fossil fuel-fired plants²⁰. The rule proposes to establish an emissions limit of 1,110 lb CO₂/MWh for new coal-fired power plants, based on a requirement to use carbon capture and sequestration (CCS). New natural gas-fired power plants would, under the proposal, face an emissions limit of 1,000 or 1,100 lb CO₂/MWh, depending on the size of the units. Natural gas-fired power plants would not be required to operate using CCS as an emissions control, and industry estimates that nearly all existing natural gas power plants could meet the more stringent standard of 1,000 lb CO₂/MWh.

More pressing, though, is the fact that at present, CCS is a prohibitively expensive emissions control, one that adds, according to the Pennsylvania Department of Environmental Protection (DEP), an additional 80% to the cost of building a power plant²¹. As DEP notes in a comment letter to EPA, the Clean Air Act requires that BSER that have been “adequately demonstrated.” CCS has not been deployed commercially at any electric generating plant in the United States, with only a handful of such projects existing at the planning stages²².

Putting aside concerns with whether or not CCS legally constitute BSER when it has not been adequately demonstrated, EPA’s 111(b) greenhouse gas proposal for new sources at minimum identified a pollutant, a source, and an emissions limit for that pollutant for that source. This is similar to the approach historically undertaken by EPA with respect to a variety of pollutant emissions from solid waste landfills, copper smelters, steel plants, automobile painting operations and other industrial source categories.

The EPA’s proposal to regulate greenhouse gas emissions for existing sources under 111(d) is, however, a significant departure from this type of approach.

Proposed Carbon Pollution Emissions Guidelines for Existing Stationary Sources: Electric Utility Generating Units

On June 2, 2014 (one day later than prescribed by the Presidential Memorandum), EPA Administrator Gina McCarthy unveiled the agency’s proposal to reduce greenhouse gas emissions from EGU’s. The

¹⁹The Clean Air Act, 42 U.S.C. 7401–7626. <http://www.epw.senate.gov/enclaws/cleanair.pdf>

²⁰ Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units. U.S. Environmental Protection Agency, Federal Register, Jan. 8, 2014 <https://www.federalregister.gov/articles/2014/01/08/2013-28668/standards-of-performance-for-greenhouse-gas-emissions-from-new-stationary-sources-electric-utility#h-9>

²¹ Re: Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units. Pennsylvania Department of Environmental Protection, June 25, 2012.

²² Power Plant Carbon Dioxide and Storage Projects. Massachusetts Institute of Technology, December 2013. http://sequestration.mit.edu/tools/projects/index_capture.html

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proposal seeks a nationwide reduction of greenhouse gas emissions of 30% below 2005 levels by 2030. Each state is given interim (2020-2029 average) and final (2030) reduction mandates, identified as pounds of CO₂ per mega-watt hour for their fossil fuel electric generating fleet. Each state's target is different, based on, according to EPA, each state's ability to approach GHG reductions from fossil fuel plants using various "building blocks".²³

These building blocks include:

- improving efficiency at fossil fuel-fired plants;
- dispatching more electricity from units that are less or zero-carbon emitting; and
- implementing demand-side energy efficiency.

There is, according to EPA, a cost for each of these strategies that will ultimately be borne by consumers and businesses. Pennsylvania's target is an aggressive one, especially when compared to neighboring or other energy producing states.

State	2012 Emissions (million metric tons of CO ₂)	2012 Energy Output (TWh)	2012 Emission Rate (Fossil, Renewable, and 6% Nuclear) (lbs/MWh)	2030 State Goal (lbs/MWh)	% rate reduction	Rate Reductions (lbs/MWh)
Colorado	38.45	49.45	1,714	1,108	35	606
Kentucky	82.89	84.69	2,158	1,763	19	395
Louisiana	44.52	66.97	1,466	883	40	583
Maryland	18.30	21.57	1,870	1,187	37	683
Montana	16.26	15.97	2,245	1,771	21	474
New Jersey	11.83	27.98	932	531	43	401
New York	31.58	70.85	983	549	45	434
North Dakota	30.27	33.47	1,994	1,783	11	211
Ohio	92.86	110.65	1,850	1,338	28	512
Oklahoma	47.86	76.07	1,387	895	35	492
Pennsylvania	105.83	151.46	1,340	1,052	32	488
Texas	223.15	378.96	1,298	791	39	507
West Virginia	65.61	71.64	2,019	1,620	20	399
Wyoming	45.36	47.28	2,115	1,714	19	401

Source: EPA Clean Power Plan, June 2, 2014

Issues with the Proposed Rule

²³ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units. Environmental Protection Agency, June 2, 2014. <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602proposal-cleanpowerplan.pdf>

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EPA set each state's target using 2012 data – a troubling baseline given the fact that several coal-fired power plants in PJM territory had either shut down at that point²⁴ or invested significant capital to improve efficiency²⁵. Also, in 2004, Pennsylvania enacted legislation creating Alternative Energy Portfolio Standards, requiring the increased deployment and use of alternative, low-carbon power generation sources. EPA should move the baseline back to 2005 in order to capture the significant reductions achieved by these actions in Pennsylvania. Further, Pennsylvania must be given credit for these reductions or it is likely that additional coal-fired units will shut down.

EPA's formula for setting the targets includes an expected 6% improvement in heat rate at coal-fired power plants²⁶. Such investments are likely to require significant sums of capital²⁷. Pursuant to the Clean Air Act, significant investments into an existing source may cause the facility to undergo New Source Review, meaning it is subject to regulations applicable to new, not existing sources. If EPA's 111(b) regulation for new EGUs is finalized as proposed, coal plants investing the capital to achieve the expected 6% improvement might then be expected to deploy CCS, which, as discussed above in this testimony, would render the project economically unviable. Even in the absence of finalization of EPA's 111(b) rule, EPA's NSR requirements create perverse environmental incentives, and can actually impede the deployment of newer and more efficient technologies.

Further, Pennsylvania's electric generators operate in a competitive market, not a rate-based market. Generators compete for the ability to provide electricity on an economic basis. Other states that remain in a vertically integrated, rate-based utility structure have "captive" ratepayers that would bear the cost. In contrast, Pennsylvania generators will have to incorporate the costs of facility improvements into their bidding price. Generators may very well find that the combination of upfront capital costs to achieve these improvements, paired with tremendous uncertainty about the ability to ever recover them, will lead to a decision to close the plants. The loss of additional coal plants, and by extension a loss of competition among generating units, likely translates to a significant economic impact to all consumers of energy, including business, in the state.

EPA's rule also expects states to dispatch at minimum 70% of the nameplate capacity of natural gas-fired plants. Generators in Pennsylvania must bid into PJM's capacity markets. Currently, generators do so on an economic basis. Historically, coal has provided baseload power given its low costs. The forced incentivizing of natural gas over coal threatens to imprint a significant distortion on the market. It is also a significant concern to the PA Chamber if enough infrastructure and fuel supply will be available to ensure that this much generation from natural gas occurs. In its proposed rule, EPA itself estimates that this forced demand increase will drive up natural gas spot prices by 12.5% in 2020²⁸. This

²⁴Exelon, Progress to Shutter More Than 2,400-MW of Coal-Fired Generation; AMP Pulls Plug on Ohio Project, December 2, 2009. <http://www.powermag.com/exelon-progress-to-shutter-more-than-2400-mw-of-coal-fired-generation-amp-pulls-plug-on-ohio-project/>

²⁵AEP Shares Plan For Compliance With Proposed EPA Regulations, June 9, 2011. <http://www.aep.com/newsroom/newsreleases/?id=1697>

²⁶Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units. Environmental Protection Agency, June 2, 2014. <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602proposal-cleanpowerplan.pdf>

²⁷Coal-Fired Power Plant Heat Rate Reductions. Sargent & Lundy, January 22, 2009. <http://www.epa.gov/airmarkt/resource/docs/coal-fired.pdf>

²⁸Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units. Environmental Protection Agency, June 2, 2014. <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602proposal-cleanpowerplan.pdf>

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will impact not only electricity ratepayers, but manufacturing and other industries that rely heavily upon natural gas as a production feedstock.

Given that EPA purported to examine each state's individual conditions, it is unreasonable that it should be expected that 70% of each state's total natural gas-fired power plant capacity run at minimum year in and year out. EPA should review recent PJM capacity auction results for an understanding of realistically achievable natural gas dispatch. In particular, a review of the dispatched generation in 2012 would be particularly instructive, given that that year was one in which natural gas prices were at their lowest point in years and dispatched natural gas-fired capacity did not approach 70%.²⁹ Further, the homogenous energy mix resulting from such explicit preference in fuel sources could leave the grid more vulnerable to supply constraints and price shocks due to unforeseen production and transmission disruption.

Increased reliance on renewable fuels raises a number of reliability and cost concerns. As a recent report noted, "[a]s the auctions deal with a fungible capacity product, there is no way to distinguish between resources on the basis of environmental attributes In many cases renewable or otherwise environmentally preferred resources are more expensive. State attempts to support such resources have run into concerns of buyer-side market power."³⁰ The same report also noted that wind and solar at present cannot be dispatched at times of peak demand, such that "increased reliance on these resources places additional stress on the system."³¹

Further, EPA's proposed renewable targets—which are based on a complex formula that expects states to adopt renewable portfolio standards at or similar to levels mandated in neighboring states—appear to disproportionately burden Pennsylvania. Under EPA's proposal, PA would have to add more than 30,000 Gigawatt-hours of renewable generation by 2030—the second-most of any state in the country and an increase of almost 800 percent over current levels.³² This appears to have been the result of EPA effectively punishing Pennsylvania for having implemented a renewable portfolio standard before the baseline 2012 year, as a cursory review of carbon emission states in regions of the country where states by and large have not adopted such standards indicates such states are not expected to significantly increase renewable generation targets or reduce their carbon emissions to the degree that Pennsylvania is. EPA also appears to have included Washington, D.C.'s renewable electric supply mandates into the northeastern region's renewable building block – even though Washington, D.C. is not a state and does not have any power generation.

The PA Chamber also urges EPA to recognize the significant reductions achieved by converting a coal plant to other fuels, as there are several recent projects underway in Pennsylvania to do just that. For example, one PA Chamber member announced it would be converting a plant in southwestern Pennsylvania to natural gas by May 2016³³ and another along the New Jersey border to low-sulfur diesel

²⁹ 2012 State of the Market Report for PJM. Monitoring Analytics, LLC, March 14, 2013.

http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2012.shtml

³⁰ Markets Matter: Expect a Bumpy Ride on the Road to Reduced CO2 Emissions. Navigant Consulting, May 2014. <http://www.navigant.com/-/media/WWW/Site/Insights/Economics/ECONMarketMattersNOCOVERTL052214.ashx>

³¹ *Ibid.*

³² Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units. Environmental Protection Agency, June 2, 2014. <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602proposal-cleanpowerplan.pdf>

³³ NRG Energy to burn natural gas at coal-fired power plant. Pittsburgh Tribune Review, June 25, 2013. <http://triblive.com/business/headlines/4249970-74/burn-coal-gas>

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oil³⁴. According to NRG, the switch to low-sulfur diesel oil would reduce CO₂ emissions at the plant by 93 percent, in addition to significant reductions of other pollutants. At present, EPA's rule does not clearly recognize the emissions reductions of such conversions.

EPA's rule also flirts with requiring CCS for natural gas plants, noting that the agency "invite[s] comment on whether incremental emissions reductions from new NGCC units that outperform performance standards for such units under CAA section 111(b) based on the use of CCS should be allowed as a compliance option to help meet the emission performance level required under a CAA section 111(d) state plan."³⁵ The PA Chamber opposes the inclusion of CCS requirements for any natural gas-fired power plant in Pennsylvania's state implementation plan, given the significant costs associated with such technology.

Finally, it is unclear whether the timeline proposed by EPA for states to both develop and implement their plans is sufficient. Once the final rulemaking is issued, states will have until June 2016 to submit a draft implementation plan for EPA approval. The PA Chamber questions, given the significance of this rulemaking and its complexity, if this timeframe is adequate. The comment period for the proposed rulemaking should be extended beyond the proposed 120 days, as was recently done for another significant rulemaking involving the Clean Water Act³⁶.

As demonstrated by steps already undertaken by industry, significant greenhouse gas reductions have been achieved. However, as Pennsylvania determines the path forward in which additional reductions are achieved, a careful consideration to the limits of available technology, the costs associated with various reductions strategies, the impact to the business community's ability to comply and bear such costs, and current and future global economic and environmental trends must be factored in.

EPA's Clean Power Plan Contradicts President Obama's Outlined Regulatory Framework

EPA's Clean Power Plan and the public participation process fall far short of President Obama's Jan. 18, 2011 executive order outlining how regulations should be crafted and implemented. Executive Order 13563³⁷ holds as a "general principle" that the nation's "regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. [...] It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative."

³⁴ Portland Generating Station to convert coal-fired boilers to use diesel fuel. Power Engineering, June 10, 2014. <http://www.power-eng.com/articles/2014/06/portland-generating-station-to-convert-coal-fired-boilers-to-use-diesel-fuel.html>

³⁵ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units. Environmental Protection Agency, June 2, 2014. <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602proposal-cleanpowerplan.pdf>

³⁶ Definitions of the "Waters of the United States" Under the Clean Water Act. Federal Register, April 21, 2014. <https://www.federalregister.gov/articles/2014/04/21/2014-07142/definition-of-waters-of-the-united-states-under-the-clean-water-act>

³⁷ Executive Order 13563: Improving Regulation and Regulatory Review. Office of the White House Press Secretary, Jan. 18, 2011. <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>

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As previously discussed, the Clean Power Plan is likely to increase electricity costs and destabilize grid security and power reliability due to overreliance on certain fuel sources. Further, such a homogenous mix of fuels, combined with each state having different emissions targets (and different state implementation plans) yet each largely operating in a multi-state or regional grid, will only result in additional unpredictability and more uncertainty. Finally, EPA's minimal public hearings, with the exception of Pennsylvania, are taking place in states that do not produce a significant share of the nation's coal reserves or rely on coal for a majority of their electricity. EPA should schedule additional public hearings in such states, as well as host open public question and answer sessions across the country to further discuss this rule with the public. EPA should also extend the public comment period by minimum of 60 days, given the breadth and complexity of the rule.

EPA Seeks Further Greenhouse Gas Reductions from Other Sectors

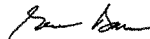
EPA has asked for funding in its upcoming federal budget to develop emissions limits for a number of other industries, including petroleum refining, pulp and paper facilities, solid waste landfills, iron and steel production, animal feeding operations, and Portland cement manufacturing³⁸. Such a sweeping strategy of emissions limits could have significant impacts on these industries by discouraging or diverting investment, resulting in job losses and reduced GDP output.

For these reasons, the PA Chamber has joined the Partnership for a Better Energy Future, a national coalition of organizations resolved to urge EPA to develop and implement sensible energy regulations. Our fellow partners in Pennsylvania include the Associated Petroleum Industries of Pennsylvania, the Pennsylvania Manufacturers Association, the Pennsylvania chapter of the National Federation of Independent Business, the Pennsylvania Farm Bureau, PIOGA, ARIPPA, the Pennsylvania Waste Industries Association and the Pittsburgh Chamber of Commerce.

By discouraging domestic investment and, in turn, encouraging investment abroad – particularly in countries that lack pollution control programs – this regulatory approach is essentially exchanging American jobs for increased global greenhouse gas emissions.

We appreciate the attention and consideration of EPA's staff with regards to our comments and concerns. We believe the recommendations included in this comment letter can help achieve our mutual goal of a strong economy and clean environment.

Sincerely,



Gene Barr
 President and CEO
 Pennsylvania Chamber of Business and Industry

³⁸ U.S. Environmental Protection Agency Fiscal Year 2015 Justification of Appropriation Estimates for the Committee on Appropriations, March 2014. http://www2.epa.gov/sites/production/files/2014-03/documents/fy2015_congressional_justification.pdf

Mr. WHITFIELD. Well, thank you, Mr. Sunday.

And our last witness is Mr. Paul Cicio, who is the president of the Industrial Energy Consumers of America. And you are recognized for 5 minutes. And be sure and turn it on.

STATEMENT OF PAUL CICIO

Mr. CICIO. Thank you, Mr. Chairman, Ranking Member Rush.

The Industrial Energy Consumers of America represents energy-intensive trade-exposed companies. These companies consume 73 percent of all of the electricity in the manufacturing sector and 75 percent of the natural gas. As a result, small changes to the price of energy have relatively large impacts to our global competitiveness.

As a sector, we use 40 quads of energy, and this has basically not changed in 40 years. In that same time period, the value-added output of the industrial sector has increased 761 percent, a tremendous success story. The industrial sector is the only sector of the economy whose greenhouse gas emissions are 22 percent below 1973 levels. These industries are very energy efficient.

IECA supports action to reduce greenhouse gas emissions so long as it will not impair our competitiveness. We must have a level playing field with global competitors. Several countries that we compete with control electric and natural gas prices to their industrials and provide subsidies and/or practices to give them a competitive advantage. If we were the military, one would say that we are engaged in hand-to-hand combat.

As proposed, the Clean Power Plan would impose significant electricity and natural gas costs and accomplish too little to reduce the threat of climate change. All costs of this unilateral action will be passed on to us the consumer and will directly impact competitiveness and jobs.

The EPA cannot look at the Clean Power Plan in isolation from the significant cumulative cost that it will impose on the industrial sector either directly or indirectly through a number of recent rulemakings. Since 2000, the manufacturing sector is down 4.9 million jobs. Since 2010, manufacturing employment has increased 525,000. We are in the early stages of recovery and fear that the Clean Power Plan could threaten this recovery.

In contrast, for example, China, a primary competitor has increased industrial employment by 31 percent since 2000. And U.S. manufacturing trade deficit since 2002 has grown to \$524 billion, of which 70 percent is with China. China's industrial greenhouse gas emissions have risen over 17 percent just since 2008. China produces 29 percent more manufactured goods than we do in the United States but emits 317 percent more than the U.S. manufacturing sector. That is over three times as much.

But despite our low greenhouse gas levels, the EPA will increase our costs and make it easier for China's carbon-intensive product to be imported, which means the Clean Power Plan would be directly responsible for increasing global greenhouse gas emissions.

There are consequences to increasing energy costs on the industry sector and it is called greenhouse gas leakage. And the EPA so far has failed to address its impact and has thus underestimated the cost. For example, when a State's electricity costs rise due to

the Clean Power Plan, these industries with multiple manufacturing locations will shift production and shift their jobs to low-cost-electricity States, along with the greenhouse gas emissions, creating State winners and losers. When they do, it will increase the price of electricity to the remaining ratepayers in that State.

If these industries still cannot be competitive, they move offshore, moving jobs and greenhouse gas emissions, accomplishing nothing environmentally. One needs to only look towards California that has high electricity costs since AB 32. To our knowledge there is not a single energy-intensive trade-exposed company that has built a new facility there. Instead, California is importing manufacturing product, they are forfeiting jobs, increasing global greenhouse gas emissions. And the same is true for the EU ETS. It is for this reason that we urge policymakers to hold offshore manufacturing competitors to the same carbon standard as domestic manufacturers.

Thank you.

[The prepared statement of Mr. Cicio follows:]

House Subcommittee on Energy and Power
Hearing on “EPA's Proposed 111(d) Rule for
Existing Power Plants, and H.R. __, Ratepayer
Protection Act”

April 14, 2015

Testimony of
Paul N. Cicio
President
Industrial Energy Consumers of America

Summary of Key Points on the EPA's Clean Power Plan (CPP)
Paul Cicio
Industrial Energy Consumers of America

1. Significant costs with insignificant benefits. The CPP accomplishes little globally to reduce the threat of climate change.
2. It is not the regulated entity that pays for the CPP. Despite the manufacturing GHG reduction success story, the manufacturing sector is going to pay up to one-third of the cost of the CPP. The consumer (ratepayer) is the primary stakeholder.
3. Escalating cumulative costs of federal regulations, including the CPP, are a significant business concern and a barrier to middle class manufacturing job creation.
4. The cumulative direct and indirect cost of EPA regulations impact manufacturing competitiveness, investment, and jobs.
5. As state electric prices rise, industrials will shift their production to low-cost electricity states creating winners and losers, and higher electricity bills for residential ratepayers. Industrial GHG leakage shifts emissions to other states, which accomplishes nothing environmentally.
6. The CPP targets coal and greatly weakens our greatest strength – fuel diversity in power generation that has kept electric prices low and reliability high.
7. Overdependence on one fuel, natural gas, will increase electricity costs long-term, potentially jeopardizing reliability and increasing natural gas prices. The industrial sector is dependent upon natural gas as a fuel and feedstock, and there are no substitutes.
8. The CPP could cause power generation shortages. Reliability problems can cost an industrial facility tens of millions of dollars per day.
9. EPA did not address industrial GHG leakage or account for increased GHG emissions through greater imports of high GHG content manufactured goods.
10. Unilateral U.S. action will require additional action to hold offshore manufacturing competitors to at least the same carbon content standard as domestic manufacturers, which should be calculated as a \$/ton of carbon content on imported products.
11. The Social Cost of Carbon (SCC) adds “global” carbon costs onto “domestic” industrial companies – creating another advantage for our global competitors.
12. Energy efficiency efforts are best directed at the residential sector. Industrials operate at high levels of energy efficiency.

I. IDENTITY OF THE INDUSTRIAL ENERGY CONSUMERS OF AMERICA (IECA)

This testimony is submitted on behalf of the Industrial Energy Consumers of America (IECA), a nonpartisan association of leading manufacturing companies with \$1.0 trillion in annual sales, over 2,900 facilities nationwide, and with more than 1.4 million employees. It is an organization created to promote the interests of manufacturing companies for which the availability, use and cost of energy, power or feedstock, play a significant role in their ability to compete in domestic and world markets.

IECA companies are energy-intensive trade-exposed (EITE) industries, which means that relatively small changes to the price of energy can have significant negative impacts to competitiveness. EITE companies are major stakeholders in this debate. EITE industries consume 73 percent of the entire manufacturing sector's use of electricity (26% of U.S.), 75 percent of the natural gas (29% of U.S.), and 82 percent of all energy from the manufacturing sector.

IECA membership represents a diverse set of industries including: chemical, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, building products, brewing, independent oil refining, and cement.

II. POSITION ON CLIMATE ACTION

IECA supports action to reduce GHG emissions in a manner that will not impair manufacturing competitiveness. The manufacturing sector must have a level playing field with global competitors. Climate change is global in scope and requires meaningful global action. Offshore competitors, who import product into the U.S., must be held to the same environmental standards as domestic manufacturers, or GHG leakage of jobs and emissions will occur, which accomplishes nothing environmentally.

For decades, IECA companies have had energy efficiency programs that reduce GHG emissions driven by intense global competition and sustainability goals. This means that these companies have achieved high levels of energy efficiency. They include chemicals, iron and steel, petroleum refineries, aluminum, paper, glass, and cement. IECA companies are active participants in both DOE and EPA energy efficiency programs, including EPA's ENERGY STAR. Numerous IECA companies have received awards and special recognition by federal and state government agencies for excellence in energy efficiency performance. Plus, EITE companies provide the majority of all industrial combined heat and power generation in the U.S.

III. IECA SUPPORTS H.R. ___, "RATEPAYER PROTECTION ACT"

IECA supports H.R. ___, the "Ratepayer Protection Act," because we believe that the courts will determine that the proposed rule is illegal in whole or in part, and will result in significant changes to the rule. Given this belief, it is not advisable for states to spend what will be a significant amount of time and money developing a State Implementation Plan (SIP) until after judicial review. All costs of the proposed rule will be passed onto us, the consumer and will directly impact competitiveness and jobs. It is not prudent for states to make decisions, for example, to force the costly shutdown of coal-fired power plants to meet a compliance target, when the CPP could be substantially changed. Secondly, because of how the proposed rule is devised; some states are significantly impacted by the rule with direct impacts to higher electricity and natural gas prices, job and investment declines resulting in slower economic growth. Because of these impacts and others, state Governors should have the ability to opt-out from this rule.

IV. SUMMARY OF IECA POSITION ON EPA'S CLEAN POWER PLAN

It is the consumer, the ratepayer who is the true stakeholder, since they will bear the burden of any costs from the CPP. We urge the EPA and states to work closely with these stakeholders as they address the CPP.

IECA does not believe that the EPA has the legal authority to regulate GHG emissions outside-the-fence line as proposed. We find that the CPP is incompatible with numerous practical and technical aspects of America's electricity system, and would represent a vast expansion of the agency's regulatory reach into the authority held by states and other federal regulatory agencies. In effect, the CPP dictates environmental, and energy and economic policy, something the authors of the Clean Air Act never intended.

IECA has serious concerns about the impacts of the CPP on the cost and potential reliability of electricity and natural gas regionally and therefore the competitiveness of U.S. manufacturers, but especially EITE industries. It is clear that the CPP as proposed will dramatically increase the cost of power and natural gas, while providing our offshore competitors an economic advantage, potentially creating GHG emission leakage, and with a harmful effect on jobs, the economy, and the environment. The U.S. manufacturing sector is currently experiencing growth accelerated by the increase in domestic shale gas production. The U.S. chemical industry alone has announced the construction of over 200 projects representing a potential cumulative investment of \$135 billion. These projects will only go forward if the U.S. maintains its relatively new competitive advantage in energy affordability and reliability. The proposed rule will increase demand for natural gas in a relatively short period of time, threatening the shale

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gas portion of the promise of a U.S. manufacturing renaissance. The proposed rule poses a significant risk to the continued shale gas stimulus of the U.S. manufacturing sector.

On flexibility, while the CPP has options touted as “flexibility” by the four blocks, examining the comments by many states, the options cannot be used for several reasons that result in often significant limits to utilization of these options. Less flexibility means higher costs to the consumer. We believe this lack of flexibility drives even higher natural gas demand than EPA anticipates and results in even higher costs of electricity and natural gas thereby directly impacting industrial competitiveness.

The EPA and states have underestimated the cost of the CPP, because they have not taken industrial GHG leakage into consideration. It is important to note that the industrial load often operates 24/7, and this has the effect of keeping rates lower for the residential ratepayer than they would be otherwise. When a state’s electricity price increases due to the CPP, manufacturing facilities with multiple locations will shift their production to other states with lower electricity costs. Some will be able to switch quickly, others would take more time. The reduction of industrial load will increase costs to all other remaining ratepayers and it will shift GHG emissions to other states as well, accomplishing nothing environmentally.

On energy efficiency, the residential sector significantly lags in energy efficiency and stands in contrast to the high level of industrial energy efficiency performance. If states were to act under the CPP’s Block 4, their efforts are best directed at the residential sector.¹

¹ IECA Comments on EPA’s Clean Power Plan Proposed Rule, December 1, 2014; page 12.

Lastly, the CPP and its resulting GHG emission reductions, that are insignificant when compared to the increases in GHG emissions that will occur in countries with which we compete. The bottom line is that the CPP has high costs with little benefit.

V. IECA PERSPECTIVES ON THE EPA'S CLEAN POWER PLAN

1. Significant costs with insignificant benefits: Accomplishes little globally to reduce the threat of climate change.

By the EPA's own admission, the proposed rule will decrease GHG emissions by 730 million tonnes by 2030. EPA's rule would decrease global emissions by 1.6% of today's level. China CO₂ emissions increased by 705 million in one year!

The CPP will cost consumers tens of billions of dollars per year and reduce the global temperature by no more than 0.006 of a degree in 90 years, an insignificant and costly improvement. In rulemaking documents from April 2010, EPA writes, "Based on the re-analysis the results for projected atmospheric CO₂ concentrations are estimated to be reduced by an average of 2.9 ppm [parts per million] (previously 3.0 ppm), global mean temperature is estimated to be reduced by 0.006 to 0.0015 °C by 2100"² (See figure 1).

FIGURE 1

16 to 1 GHG increase	The Partnership for a Better Energy Future reports: "for every ton of CO ₂ reduced in 2030 as a result of EPA's rule, the rest of the world will have increased emissions by more than 16 tons."
13.5 days China emissions	U.S. reduction by 2030 would offset the equivalent of just 13.5 days of CO ₂ emissions from China alone.
1% global reduction	The GHG reduction from the rule equates to a global GHG emission reduction of approximately 1.3%.
2/100	Using the accepted climate change model

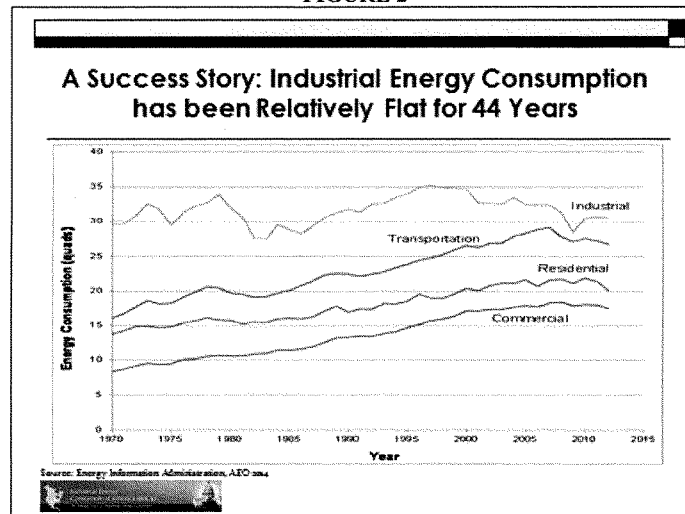
² <http://www.cnsnews.com/news/article/epa-estimates-its-greenhouse-gas-restrictions-would-reduce-global-temperature-no-more>.

	(Cato Institute Model for Assessment of Greenhouse-gas Induced Climate Change), projected global warming temperature increase is reduced by about 18/1000 degree.
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2. It is not the regulated entity that pays for the CPP. Despite the manufacturing GHG reduction success story, the manufacturing sector is going to pay up to one-third of the cost of the CPP.

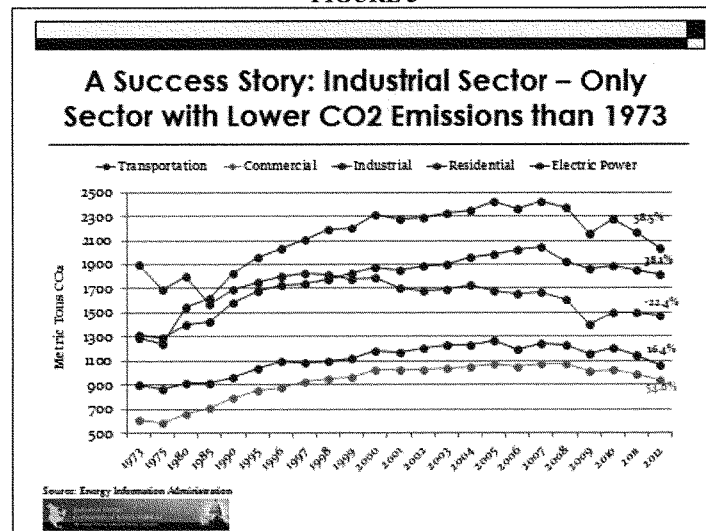
U.S. manufacturing consumption of energy has basically not increased in over 40 years, using about 40 quads of energy per year (See figure 2), while all other sectors of the economy have substantially increased energy consumption. According to the U.S. Bureau of Labor Statistics (BLS), over that same time period manufacturing value-added output has increased by 761 percent, from \$235 billion in 1970 to over 2 trillion in 2013, a tremendous success story.

FIGURE 2



Because of investment in productivity, including consistent improvement in energy efficiency and greater use of natural gas, GHG leakage, GHG emissions are 22 percent below 1973 levels, while all other sectors of the economy have significantly higher emissions (See figure 3). The point is obvious, and it is that the industrial sector is not the problem, yet in the CPP the manufacturing sector is going to pay substantially higher electricity and natural gas costs, and with potential costs due to reliability outages.

FIGURE 3



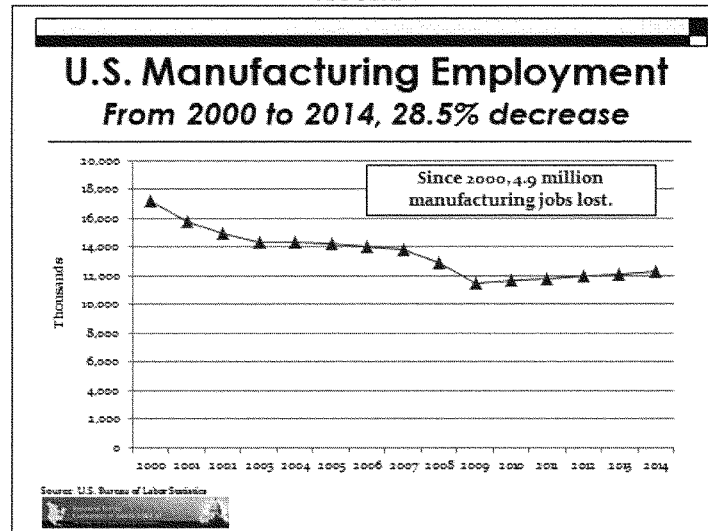
3. Escalating cumulative costs of federal regulations, including the CPP, are a significant business concern and a barrier to middle class manufacturing job creation.

It is inconsistent for the Administration to say they support middle class job creation, while continuing to increase costs and barriers to producing manufactured products in the U.S. From 2000 to 2013, according to the analysis of the American Community Survey, U.S. Census, IPUMS-USA, University of Minnesota, and Pew,

every state has experienced a decline in the share of households that are middle class, and all but four have experienced a decline in medium income (see Appendix 1 and 2).

We urge policymakers to be mindful of the economic realities that has and will cause manufacturers to move their facilities to offshore locations to survive. Unfortunately, this already has resulted in significant changes to employment (See figure 4).

FIGURE 4



Despite a recent recovery in job creation, manufacturing employment is still down 4.9 million since 2000, according to the BLS. Global competition is cutthroat and we often must compete with companies that are government-owned, or subsidized in many different ways. Many countries actually prioritize and support their manufacturing sector. That cannot be said of U.S. federal policy, especially EPA policy. Figure 5 illustrates for example, that China's manufacturing sector continues to increase employment, while the U.S. and the EU-28 have experienced substantial job declines since 2000. And, while the

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U.S. and E.U. industrial sector GHG emissions have declined, China's industrial GHG emissions have substantially increased (See figure 6). While no U.S. corporation would want to substitute the quality of air in the U.S. for that of China, these numbers are a clear reminder that there are clear winners and losers, and consequences for higher cumulative costs heaped upon the U.S. manufacturing sector.

FIGURE 5

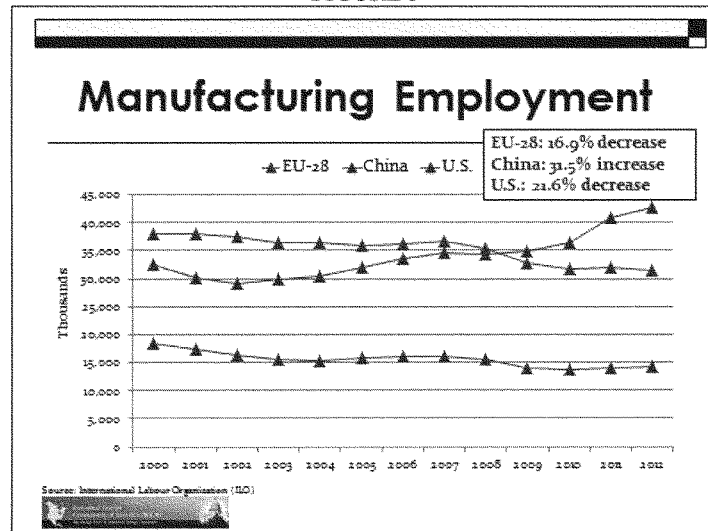
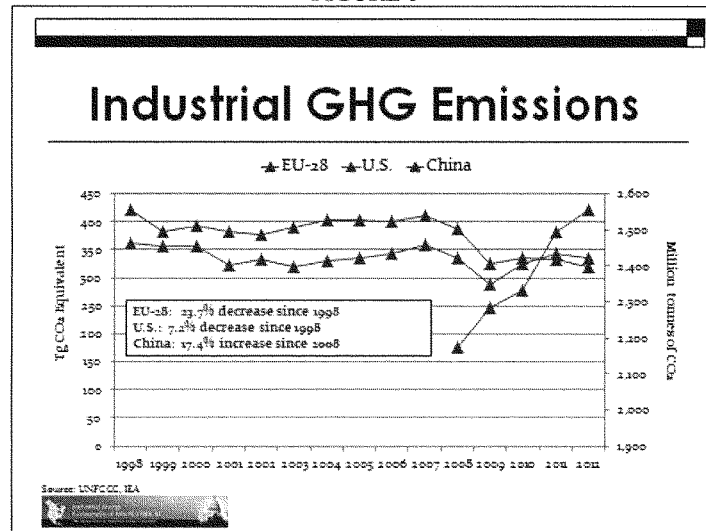


FIGURE 6



While the manufacturing sector, especially the EITE industries, have benefited from the low cost of natural gas, the cost of regulation continues to weigh heavily on investment, job creation, and global competitiveness. According to the National Association of Manufacturers (NAM) 2014 study “The Cost of Federal Regulations to the U.S. Economy, Manufacturing and Small Business,” the total cost of federal regulations in 2012 was \$2.028 trillion (in 2014 dollars). Of course, not all regulation is bad regulation. Nonetheless, many of these regulatory costs are costs that our offshore competitors do not have.

The U.S. trade deficit is a key measurement of competitiveness. The manufacturing trade deficit has grown 45 percent since 2002, and in 2014, 70 percent is with one country, which is China. In fact, China’s share of the deficit increased 145 percent since 2002.

FIGURE 7
U.S. MANUFACTURING TRADE DEFICIT

	2002	2005	2010	2014	% Change (‘02 to ‘14)
\$ Billions	-361.5	-541.4	-411.7	-524.2	+45.0%
China Trade Deficit (%)	28.5%	38.0%	71.1%	70.0%	+145.6%

Source: International Trade Administration

4. The cumulative direct and indirect cost of EPA regulations impact manufacturing competitiveness, investment, and jobs. All electric generating units (EGUs) costs are eventually passed onto the consumer.

Even though the EPA GHG rule is directed at the EGUs, it is the consumer of electricity that will bear the cost of the rule. Depending upon what state a manufacturer is located, they could pay up to one-third of the costs. Higher electricity and natural gas costs reduce profitability and directly reduce capital investment and jobs. According to the EPA, the CPP will cost the manufacturing sector \$3.7 billion per year or \$37 billion over the next 10 years in increased electricity and natural gas costs. Non-EPA economic studies suggest that the EPA cost estimate is significantly understated. In November 2014, Energy Ventures produced an analysis which states that annual power and gas costs for residential, commercial, and industrial customers in America would be \$284 billion higher (\$173 billion in real terms) in 2020 compared to 2012—a 60% (37%) increase. See Appendix 3 for more non-EPA economic study examples that show substantially higher costs for the CPP than the EPA estimate.

The proposed ozone rule could add even higher costs to electricity and natural gas. According to the EPA, the proposed ozone rule would increase electricity costs another \$2.7 billion and \$3.8 billion for natural gas. Combined, industrial electricity and natural gas costs could increase to \$6.5 billion per year or \$65 billion over the next ten years.

When the proposed CPP and ozone regulations are added to the EIA AEO 2014 forecast, industrials could expect a 33.7 percent increase in electricity prices and a 98.9 percent increase in natural gas prices by 2025 (see figures 8, 9, and 10).

FIGURE 8

Annual Costs Due To EPA Regulations In 2025			
Regulation	Industrial Electricity Costs	Industrial Natural Gas Costs	Total Costs/Year
GHG Regulations on Existing Power Generation Facilities	\$2.2 billion, 2.3%+	\$1.5 billion, 12.0%+	\$3.7 billion
Ozone*	\$2.7 billion, 2.8%+	\$3.8 billion, 6.3%+	\$6.5 billion
TOTAL	\$4.9 billion, 9.4%+	\$5.3 billion, 20.4%+	\$10.2 billion

*Note: This analysis includes rules MATS, CAIR, most NSPS, and Tier 3 vehicle standards, amongst others.

Source: EPA, NAEI, NERA

FIGURE 9

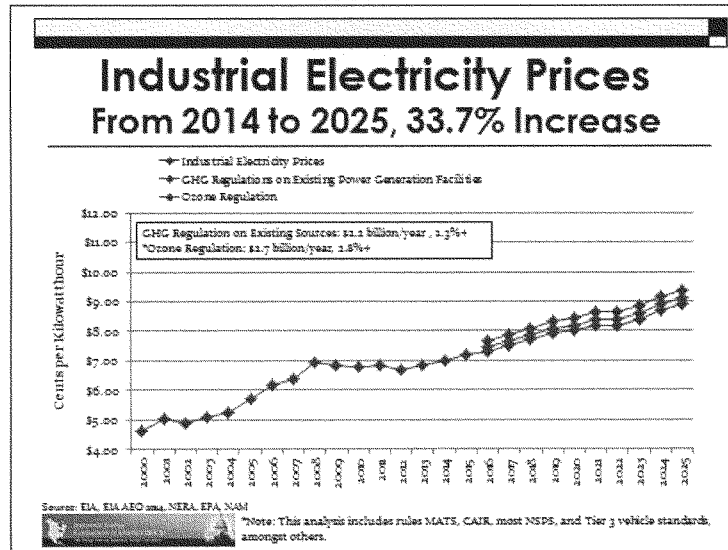
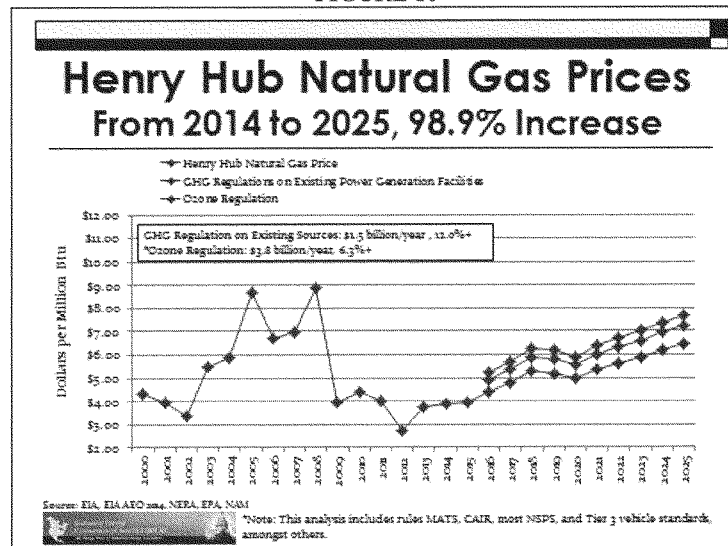


FIGURE 10



For total costs, EPA's own estimates project that the rule will cause nationwide electricity price increases averaging between 6 and 7 percent in 2020, and up to 12

percent in some locations.³ EPA estimates annual compliance costs between \$5.4 and \$7.4 billion in 2020, rising up to \$8.8 billion in 2030. These are power sector compliance costs only, and do not capture the subsequent spillover impacts of higher electricity rates on overall economic activity.

The United Mine Workers of America have estimated that the rule will result in 187,000 direct and indirect job losses in the utility, rail, and coal industries in 2020, and cumulative wage and benefit losses from these sectors of \$208 billion between 2015 and 2035.⁴

Higher energy prices disproportionately harm low-income and middle-income families. Since 2001, energy costs for middle-income and lower-income families have increased by 27 percent, while their incomes have declined by 22 percent.⁵ EPA's rule will only exacerbate this trend.

In late July 2014, the Center for Strategic and International Studies (CSIS) released a preliminary analysis of the EPA proposal.⁶ This analysis found that the EPA proposal could result in:

- Nationwide costs of up to \$32 billion per year; and
- Average electricity rate increases of up to 9.9 percent per year.

The Wall Street Journal called EPA's rule a "huge indirect tax and wealth redistribution scheme that the EPA is imposing by fiat [that] will profoundly touch every American."⁷ The paper further noted that "it is impossible to raise the price of carbon

³ EPA, Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants, June 2014, available at <http://www2.epa.gov/sites/production/files/2014-06/documents/20140602ria-clean-power-plan.pdf>.

⁴ <http://environmental.pasenategop.com/files/2014/06/Trisko-Testimony.pdf>.

⁵ http://americaspower.org/sites/default/files/Trisko_2014_1.pdf.

⁶ Rhodium Group and Center for Strategic and International Studies, Remaking American Power: Preliminary Results, July 24, 2014.

⁷ <http://online.wsj.com/articles/carbon-income-inequality-1401752504>.

energy without also raising costs across the economy. The costs will ultimately flow to consumers and businesses.”

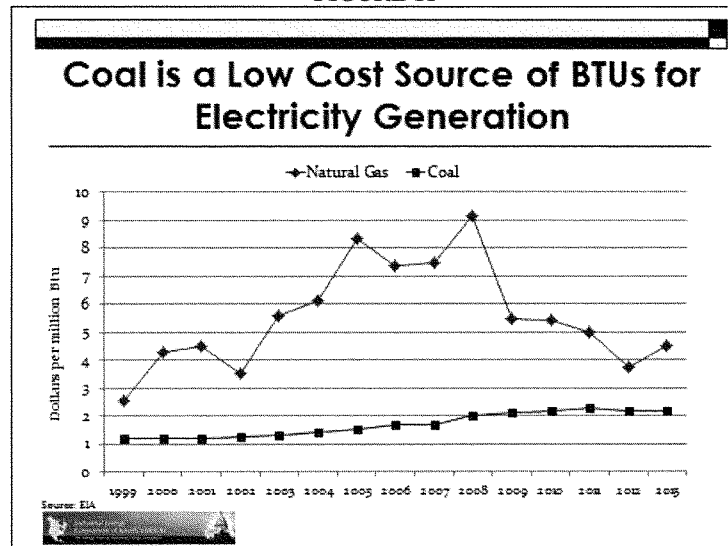
5. As state electric prices rise, industrials will shift their production to low-cost electricity states creating state winners and losers, and higher electric bills for residential ratepayers.

Under the CPP, if a state’s electricity prices rise, states can expect manufacturers who have multiple U.S. production sites to shift production to other states with lower electricity costs. This results in higher electricity rates for all remaining retail consumers because the fixed costs to generate electricity are spread over fewer electrons. Secondly, it shifts GHG emissions and jobs to other states, accomplishing nothing environmentally. If industrials cannot shift production to other U.S. manufacturing sites, GHG leakage to other countries will occur.

6. The CPP targets coal and greatly weakens our greatest strength, fuel diversity in power generation that has kept electric prices low and reliability high.

The CPP dramatically reduces the use of coal, an abundant resource of low-cost energy that has helped to keep electricity and natural gas costs low. Coal is needed in the mix of generation energy alternatives to provide diversified, stable, and reliable base load energy, to provide voltage support, to provide one of the few sources of onsite “stored” energy in the supply mix, and to compete economically with natural gas. With a significant reduction of coal in the mix, as natural gas prices rise, it will substantially drive up electricity prices. Figure 11 illustrates the significant cost benefits provided by coal that have helped to keep U.S. electricity prices low.

FIGURE 11



According to the International Energy Agency (IEA), while the EPA has consistently pursued regulations to stop coal use in the U.S., the rest of the world is forecasted to increase coal use by 2019 (See figure 12). Even Japan has made new commitments to coal-fired power generation, having just recently announced they will build 40 coal-fired power plants that will generate 21,200 MWs of electricity.⁸

⁸ "Japan's New Coal Plants Threaten Emission Cuts," Bloomberg News, April 9, 2015.

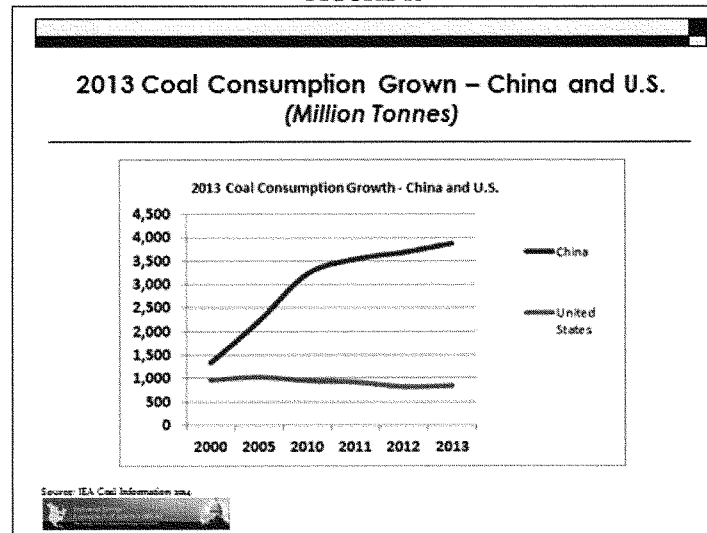
FIGURE 12

Projections from IEA Mid-Term Outlook 2014					
	2012	2013 e/	2015	2017	2019
U.S.	588	603	597	574	543
China	2,310	2,422	2,549	2,692	2,824
India	468	477	523	576	635
Africa and Middle East	148	152	168	179	190
Europe/Eurasia	265	252	249	262	274
ASEAN	127	129	157	183	209
Latin America	15	20	20	22	25
Other	756	745	769	754	772
Total	4,677	4,800	5,032	5,242	5,472

Source: IEA

The most striking difference is between the U.S. and China as illustrated in Figure 13 below. China's GHG emissions growth rates greatly outpace, and more than negate, the potential reductions from the CPP.

FIGURE 13

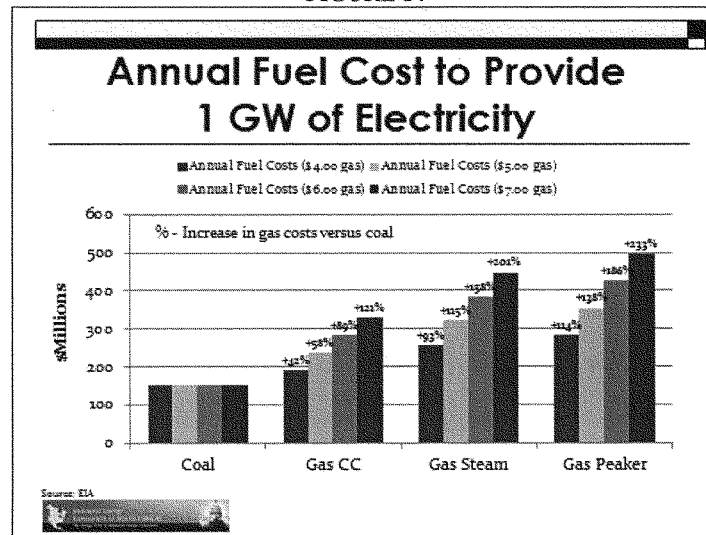


7. Overdependence on one fuel, natural gas, will increase electricity costs, potentially jeopardizing reliability long-term and increasing natural gas prices. The industrial sector is dependent upon natural gas as a fuel and feedstock, and there are no substitutes.

According to the Energy Information Administration (EIA), the U.S has a 300-year supply of coal. Natural gas on the other hand, has only a 59-year supply at 2025 demand, according to the AEO 2014. EIA says that proven reserves are only 9.6 years of supply at 2025 demand. It is also troublesome, that EIA forecasts Henry Hub prices to increase by 76 percent by 2025 as compared to 2013, which means that our electricity prices will also rise substantially. These prices do not take into consideration the recent crude oil price decline that has resulted in a significant drop in drilling nationwide with longer term effects to be determined. Shale natural gas has significant decline rates, and without constant drilling, production drops precipitously.

Figure 14 illustrates the increases in electricity prices that can be anticipated from the three types of gas-fired generation technologies at varying costs of natural gas from \$4.00 to \$7.00 per MM Btu. The point being is that relatively small increases in the price of natural gas have substantially high impacts to electricity price outputs.

FIGURE 14



8. The CPP could cause power generation shortages. Reliability problems can cost an industrial facility tens of millions of dollars per day.

As recent as April 1, 2015, Gerry Cauley, president and CEO of the North American Electric Reliability Corporation (NERC), said the GHG rules could cause the retirement of 60 GW of generating capacity, mainly coal-fired generation, over the next few years, and could result in power generation shortages. He specifically cites the Great Plains, the Midwest, the Northeast, and Texas as likely reliability problems. NERC plans to release a new report on April 20, 2015.

Furthermore, Mr. Cauley has said that “If there’s a reliability issue that comes up, we can’t have an environmental rule that trumps reliability. We don’t want to put companies in a position where they have to choose between violating an environmental rule or violating a reliability standard.” IECA wholeheartedly agrees with his comment.

What does not seem to be said enough is that reliability is simply a question of cost and time. State public policy servants responsible for the reliability of the grid, with time, can simply throw costs (capital) at reliability to ensure there is no problems. But these are costs that would not be incurred without the CPP. And, these are not costs that the EPA has figured into their cost estimates. The bottom line is that here again, it’s the consumer who will be forced to absorb these additional costs. Importantly, capital costs, investments to ensure reliability need sufficient time to permit, engineer, construct and put into operation. The 2020 interim target is a significant obstacle to having sufficient time to put these facilities into operation.

From IECA’s perspective, there are two reliability threats, one from power outages and the other from regional natural gas curtailments. In both cases, it is manufacturing facilities that are always the first to be curtailed.

For industrial facilities, reducing electric and gas reliability could result in the temporary or permanent shutdown of manufacturing facilities, which could result in costs starting from tens of millions of dollars per day. Damages can occur to the product being produced and the manufacturing equipment.

9. EPA did not address industrial GHG leakage and account for increased GHG emissions through greater imports of high GHG content manufactured goods.

When EPA did its economic analysis of the CPP, it failed to account for industrial GHG leakage. By not including industrial GHG leakage, EPA has overestimated benefits and underestimated costs. IECA urges the EPA to complete a study to understand the impact of the CPP on industrial GHG leakage including increased imported GHG emissions. The imported GHG emissions must be subtracted from domestic GHG reductions.

Examining GHG emissions from imported manufacturing products is overdue. To illustrate, 75 percent of the U.S. trade deficit is with one country, China.⁹ According to the IEA and the World Bank,¹⁰ in 2011, China's total manufactured goods value-added were over \$2.3 trillion, as compared to \$1.8 trillion for the U.S. However, China's total manufacturing industries' CO₂ emissions were 2.5 trillion tonnes, while the U.S. manufacturing sector was only 598 billion tonnes. This means that China produced 29 percent more manufactured goods, but emitted 317 percent more CO₂ than U.S. manufacturing. U.S. manufacturing produces three times the amount of goods for every one tonne of carbon, as compared to China.

Industrial GHG leakage is an accepted climate policy challenge. For example, the Waxman-Markey legislation, the "American Clean Energy and Security Act," included specific provisions to reduce the impact of industrial GHG leakage. In December 2, 2009, several Senators released the report, "The Effects of H.R. 2454 on International Competitiveness and Emission Leakage in Energy-Intensive Trade-Exposed Industries."¹¹ Both the EU ETS and California's AB32 carbon cap and trade regulation

⁹ U.S. Bureau of Labor Statistics.

¹⁰ International Energy Agency, The World Bank, <http://data.worldbank.org/indicator/NV.IND.MANF.CD>.

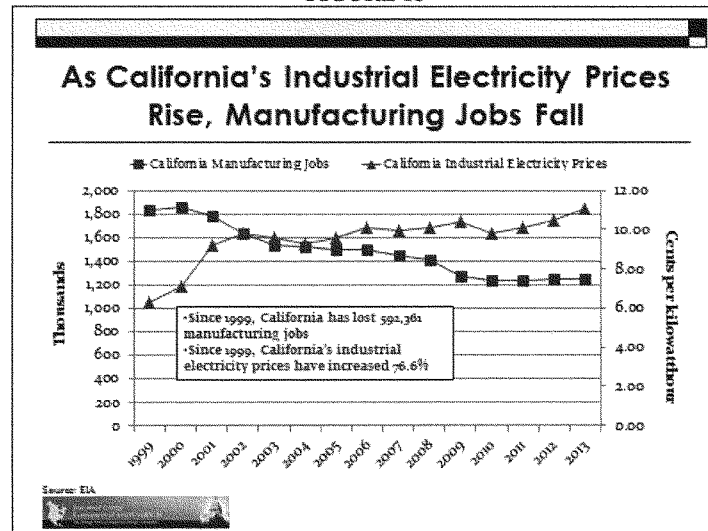
¹¹ http://www.epa.gov/climatechange/Downloads/EPAactivities/InteragencyReport_Competitiveness-EmissionLeakage.pdf.

acknowledge GHG leakage as a real problem. Despite this, the CPP does not contain provisions to avoid industrial GHG leakage.

Historically, there is an absolute direct relationship between U.S. energy costs and manufacturing employment, and the manufacturing trade deficit. As energy costs rise, manufacturing jobs and investment decrease, and imports increase. The reverse is also true, as U.S. energy costs decline, manufacturing jobs and investment increase, and exports increase.

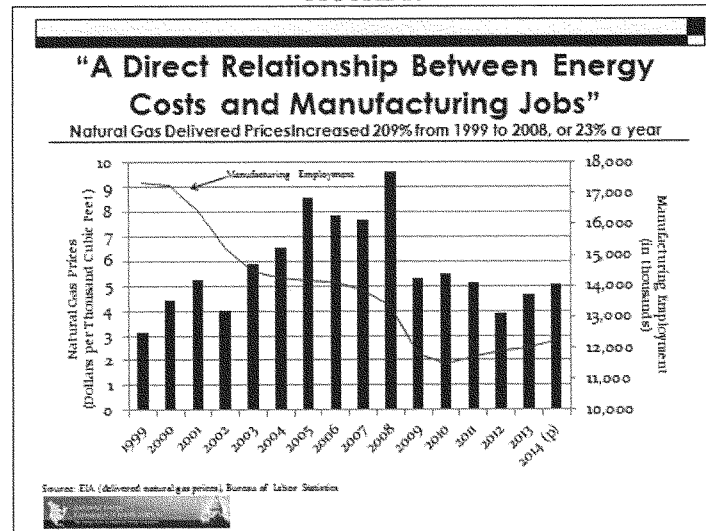
California is a good example. California's electricity prices in 2013 were the fifth highest in the lower 48 states, and the state has also implemented carbon cap and trade. Figure 15 illustrates that California's electricity prices rose over 76 percent since 1999, and they have experienced a corresponding staggering drop in manufacturing employment of 592,361 high paying jobs. It is important to note that while many states have increased manufacturing jobs since 2010, California has not. Manufacturing companies specifically avoid investing in California because of high electricity costs that are only going much higher because of the carbon cap and trade long term. Cap and trade adds significant regulatory and cost uncertainty. The net effect is that imports of industrial GHG intensive manufactured products into California have substantially increased.

FIGURE 15



Another instructive example is the history of U.S. natural gas prices and their impact on manufacturing jobs. In this case, natural gas is a surrogate for electricity prices. From 1999 to 2008, when natural gas prices rose 209 percent, it had a significant impact on national manufacturing employment that fell by almost 5.0 million direct jobs, according to BLS, and over 50,000 manufacturing facilities were closed. And now, largely because of lower natural gas costs, the BLS data indicates that manufacturing jobs have increased 466,000 from 2010 to 2013.

FIGURE 16



10. Unilateral U.S. action will require additional action to hold offshore manufacturing competitors to at least the same carbon content standard as domestic manufacturers by imposing carbon standards, calculated as a \$/ton of carbon content on imported products.

If the CPP stands unchanged, action will be needed to level the playing field with imported manufactured products. Manufacturing consumes 26 percent of all U.S. electricity and 29 percent of all natural gas, both of which are greatly impacted by the CPP, resulting in higher prices. Imposing costs on domestic manufacturers without imposing at least the same costs on imported manufacturing goods, reduces competitiveness, jobs, and will increase imports, further accelerating the trade deficit and national economic decline.

EPA/states must inflict, at least the same economic pain, in dollars per carbon content on imported manufactured products. The EPA must establish an import carbon fee or equivalent based upon the carbon content of the imported product.

Figure 17 illustrates the importance of sound climate policy. If the U.S. can keep energy costs low, reduce GHG emissions cost-effectively and with a level playing field, there is a great opportunity to displace imported products, creating a significant number of domestic manufacturing jobs while reducing global GHGs. To do so, will require the U.S. manufacturing sector to increase the amount of energy it consumes, while reducing GHG intensity long-term. Importantly, this cannot be achieved if the EPA imposes a “cap” on GHG emissions.

Note that 70 percent of the trade deficit is with China, a country very dependent upon coal and whose manufacturing processes, at large, are generally less energy efficient and more carbon intensive than comparable facilities in the U.S. (see number 9 above.)

FIGURE 17

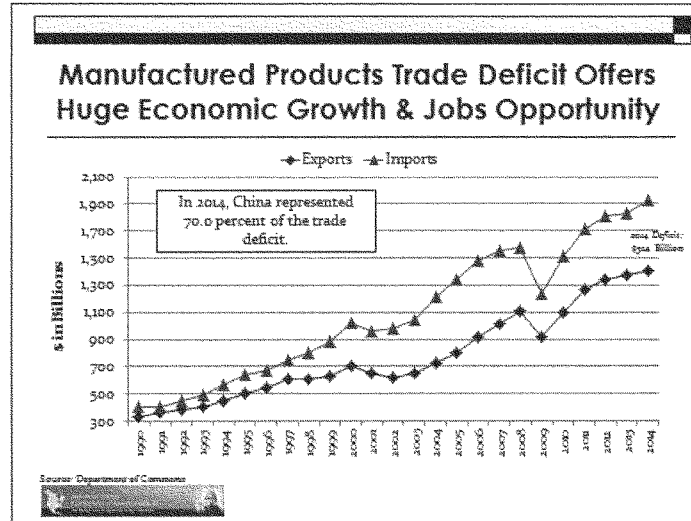


FIGURE 18



11. The Social Cost of Carbon (SCC) adds “global” carbon costs onto “domestic” industrial companies – creating another advantage for our global competitors.

EPA's unilateral domestic application of its arbitrary estimates of the global SCC to justify this proposed rule are contrary to law and federal policy. The SCC calculates the global cost of carbon to justify domestic costs and benefits. First, to be sure, these are inflated costs because they failed to use the OMB 7 percent discount rate. Second, no other country in the world is imploding "global" costs on their their country's economy. One only needs to look at the carbon price of the EU ETS, RGGI or the California AB32 to see that no one is pricing carbon at these elevated levels. And, for U.S. industrials who compete globally, absorbing these therotical higher costs could impact competitiveness long term.

We appreciate the opportunity to provide this testimony on the EPA's Clean Power Plan.

APPENDIX 1
SHARE OF HOUSEHOLDS THAT ARE MIDDLE CLASS

State	2000	2013	Difference
Alabama	46.7%	44.1%	-5.6%
Alaska	53.5%	51.8%	-3.2%
Arizona	50.0%	45.9%	-8.2%
Arkansas	48.9%	45.7%	-6.5%
California	46.7%	43.5%	-6.9%
Colorado	51.3%	47.3%	-7.8%
Connecticut	48.9%	44.9%	-8.2%
Delaware	52.2%	47.9%	-8.2%
Florida	48.8%	45.9%	-5.9%
Georgia	49.0%	44.2%	-9.8%
Hawaii	49.9%	48.6%	-2.6%
Idaho	52.7%	51.9%	-1.5%
Illinois	49.8%	45.8%	-8.0%
Indiana	53.0%	48.6%	-8.3%
Iowa	54.1%	51.0%	-5.7%
Kansas	51.8%	48.3%	-6.8%
Kentucky	47.1%	44.5%	-5.5%
Louisiana	45.0%	42.0%	-6.7%
Maine	51.6%	46.9%	-9.1%
Maryland	51.6%	48.2%	-6.6%
Massachusetts	48.6%	44.8%	-7.8%
Michigan	50.6%	46.3%	-8.5%
Minnesota	52.9%	48.9%	-7.6%
Mississippi	46.3%	42.8%	-7.6%
Missouri	50.2%	47.1%	-6.2%
Montana	51.3%	46.6%	-9.2%
Nebraska	52.2%	49.1%	-5.9%
Nevada	53.6%	48.8%	-9.0%
New Hampshire	53.9%	49.7%	-7.8%
New Jersey	48.8%	44.8%	-8.2%
New Mexico	48.0%	43.2%	-10.0%
New York	45.1%	42.3%	-6.2%
North Carolina	50.3%	45.7%	-9.1%
North Dakota	52.6%	47.5%	-9.7%
Ohio	50.9%	45.7%	-10.2%
Oklahoma	48.9%	46.8%	-4.3%
Oregon	51.4%	47.7%	-7.2%
Pennsylvania	49.3%	46.5%	-5.7%
Rhode Island	48.2%	45.1%	-6.4%
South Carolina	50.0%	45.8%	-8.4%
South Dakota	52.6%	49.4%	-6.1%
Tennessee	49.2%	45.8%	-6.9%

State	2000	2013	Difference
Texas	47.8%	45.2%	-5.4%
Utah	55.0%	52.3%	-4.9%
Vermont	52.4%	47.4%	-9.5%
Virginia	49.5%	45.9%	-7.3%
Washington	51.7%	47.4%	-8.3%
West Virginia	46.7%	44.7%	-4.3%
Wisconsin	54.6%	48.9%	-10.4%
Wyoming	51.5%	51.2%	-0.6%

Source: Stateline analysis of American Community Survey, U.S. Census and IPUMS-USA, University of Minnesota, Pew

APPENDIX 2 MEDIAN INCOME

State	2000	2013	Difference
Alabama	\$47,038	\$42,849	-8.9%
Alaska	\$71,065	\$72,237	1.6%
Arizona	\$55,889	\$48,510	-13.2%
Arkansas	\$44,347	\$40,511	-8.6%
California	\$65,445	\$60,190	-8.0%
Colorado	\$65,046	\$58,823	-9.6%
Connecticut	\$74,322	\$67,098	-9.7%
Delaware	\$65,291	\$57,846	-11.4%
Florida	\$53,493	\$46,036	-13.9%
Georgia	\$58,473	\$47,829	-18.2%
Hawaii	\$68,652	\$68,020	-0.9%
Idaho	\$51,774	\$46,783	-9.6%
Illinois	\$64,201	\$56,210	-12.4%
Indiana	\$57,279	\$47,529	-17.0%
Iowa	\$54,388	\$52,229	-4.0%
Kansas	\$55,980	\$50,972	-8.9%
Kentucky	\$46,400	\$43,399	-6.5%
Louisiana	\$44,876	\$44,164	-1.6%
Maine	\$51,317	\$46,974	-8.5%
Maryland	\$72,852	\$72,483	-0.5%
Massachusetts	\$69,592	\$66,768	-4.1%
Michigan	\$61,551	\$48,273	-21.6%
Minnesota	\$64,919	\$60,702	-6.5%
Mississippi	\$43,173	\$37,963	-12.1%
Missouri	\$52,273	\$46,931	-10.2%
Montana	\$45,507	\$46,972	3.2%
Nebraska	\$54,087	\$51,440	-4.9%
Nevada	\$61,433	\$51,230	-16.6%
New Hampshire	\$68,166	\$64,230	-5.8%
New Jersey	\$75,991	\$70,165	-7.7%
New Mexico	\$47,035	\$43,872	-6.7%

State	2000	2013	Difference
New York	\$59,796	\$57,369	-4.1%
North Carolina	\$53,996	\$45,906	-15.0%
North Dakota	\$47,684	\$55,759	16.9%
Ohio	\$56,437	\$48,081	-14.8%
Oklahoma	\$46,025	\$45,690	-0.7%
Oregon	\$56,382	\$50,251	-10.9%
Pennsylvania	\$55,266	\$52,007	-5.9%
Rhode Island	\$58,000	\$55,902	-3.6%
South Carolina	\$51,099	\$44,163	-13.6%
South Dakota	\$48,619	\$48,947	0.7%
Tennessee	\$50,104	\$44,297	-11.6%
Texas	\$55,019	\$51,704	-6.0%
Utah	\$63,010	\$59,770	-5.1%
Vermont	\$56,300	\$52,578	-6.6%
Virginia	\$64,321	\$62,666	-2.6%
Washington	\$63,079	\$58,405	-7.4%
West Virginia	\$40,921	\$41,253	0.8%
Wisconsin	\$60,344	\$51,467	-14.7%
Wyoming	\$52,215	\$58,752	12.5%

Source: Stateline analysis of American Community Survey, U.S. Census and IPUMS-USA, University of Minnesota, Pew

APPENDIX 3

NERA, OCTOBER 2014

http://www.americaspower.org/sites/default/files/NERA_CPP%20Report_Final_Oct%202014.pdf

Figure ES-1: Overview of Energy System Impacts of State Unconstrained (BB1-4) and State Constrained (BB1-2) Scenarios (Annual Average, 2017-2031)						
	Total Coal Retirements Through 2031	Coal-Fired Generation	Natural Gas-Fired Generation	Henry Hub Natural Gas Price	Delivered Electricity Price	Electricity Sector CO ₂ Emissions
	GW	TWh	TWh	2013\$/MMBtu	2013 ¢/kWh	MM metric tons
Baseline	51	1,672	1,212	\$5.25	10.8	2,080
State Unconstrained (BB1-4)	97	1,191	1,269	\$5.36	12.0	1,624
Change from Baseline	+45	-481	+57	+\$0.11	+1.3	-456
% Change from Baseline	+18%	-29%	+5%	+2%	+12%	-22%
State Constrained (BB1-2)	220	492	2,015	\$6.78	12.6	1,255
Change from Baseline	+169	-1,180	+802	+\$1.53	+1.9	-825
% Change from Baseline	+69%	-71%	+66%	+29%	+17%	-40%
Note: Coal retirements are cumulative from 2014. Percentage change in coal retirements is relative to total baseline 2031 coal capacity.						
Source: NERA calculations as explained in text.						

Figure ES-2: Energy System Costs of State Unconstrained (BB1-4) and State Constrained (BB1-2) Scenarios

	State Unconstrained (BB1-4)	State Constrained (BB1-2)
Present Value (Billion 2013\$)		
Cost of Electricity, Excluding EE	-\$209	\$335
Cost of Energy Efficiency	\$560	\$0
Cost of Non-Electricity Natural Gas	<u>\$15</u>	<u>\$144</u>
Total Consumer Energy Costs	\$366	\$479
Notes: Present value is from 2017 through 2031, taken in 2014 using a 5% real discount rate Source: NERA calculations as explained in text.		

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Figure 11: Energy System Cost Impacts of State Compliance Scenarios (billion 2013 dollars)

	2017	2020	2023	2026	2029	PV (2017-2031)
State Unconstrained (BB1-4)						
Cost of Electricity, Excluding EE	-\$9	-\$13	-\$24	-\$36	-\$42	-\$209
Cost of Energy Efficiency	\$25	\$52	\$71	\$73	\$73	\$560
Cost of Non-Electricity Natural Gas	<u>\$0</u>	<u>\$3</u>	<u>\$3</u>	<u>\$1</u>	<u>\$1</u>	<u>\$15</u>
Total Consumer Energy Costs	\$16	\$42	\$49	\$39	\$33	\$366
State Constrained (BB1-2)						
Cost of Electricity, Excluding EE	-\$6	\$33	\$46	\$59	\$73	\$335
Cost of Energy Efficiency	\$0	\$0	\$0	\$0	\$0	\$0
Cost of Non-Electricity Natural Gas	<u>\$1</u>	<u>\$19</u>	<u>\$21</u>	<u>\$20</u>	<u>\$21</u>	<u>\$144</u>
Total Consumer Energy Costs	-\$4	\$51	\$68	\$79	\$94	\$479

Note: Present value is from 2017 through 2031, taken in 2014 using a 5% real discount rate.
Source: NERA calculations as explained in text.

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Figure 16: Ratepayer Class Delivered Electricity Price Impacts of State Scenarios (Annual Average, 2017-2031, 2013 cents per kWh)

	Residential	Commercial	Industrial	All Sectors
Baseline	12.7 ¢	11.0 ¢	7.8 ¢	10.8 ¢
State Unconstrained (BB1-4)	14.3 ¢	12.6 ¢	8.3 ¢	12.0 ¢
Change from Baseline	+1.7 ¢	+1.5 ¢	+0.5 ¢	+1.3 ¢
% Change from Baseline	+13%	+14%	+6%	+12%
State Constrained (BB1-2)	14.6 ¢	12.9 ¢	9.5 ¢	12.6 ¢
Change from Baseline	+2.0 ¢	+1.9 ¢	+1.7 ¢	+1.9 ¢
% Change from Baseline	+15%	+17%	+22%	+17%

Source: NERA calculations as explained in text.

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Figure 19: Consumer Electricity-Related Cost Impacts of State Scenarios (Annual Average, 2017-2031, billion 2013 dollars)

	Residential	Commercial	Industrial	All Sectors
Baseline	\$192	\$161	\$85	\$439
State Unconstrained (BB1-4)				
Electricity Bills	\$195	\$164	\$84	\$443
Consumer Energy Efficiency Costs	\$13	\$13	\$4	\$29
Total Consumer Electricity-Related Costs	\$207	\$177	\$88	\$472
Change from Baseline	+\$15	+\$15	+\$3	+\$34
% Change from Baseline	+8%	+9%	+3%	+8%
State Constrained (BB1-2)				
Electricity Bills	\$210	\$179	\$98	\$487
Consumer Energy Efficiency Costs	\$0	\$0	\$0	\$0
Total Consumer Electricity-Related Costs	\$210	\$179	\$98	\$487
Change from Baseline	+\$18	+\$18	+\$13	+\$48
% Change from Baseline	+9%	+11%	+15%	+11%

Source: NERA calculations as explained in text.

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MISO LETTER TO EPA, PARTICULARLY SECTION ON INTERIM DEADLINES, NOVEMBER 25, 2014, http://greatlakeslegalfoundation.org/wwcms/wp-content/uploads/2014/12/MISO_CPP_Comment_112514.pdf

- Sufficient time is required to engage in rational planning, construction and integration of cost-effective resource and infrastructure solutions that maintain reliable and efficient delivery of electricity (page 2).
- Without sufficient time to plan, cost-effective decisions for the long term will be sacrificed (page 2).
- At best, the truncated timeline created by the interim performance requirements will force state regulators and generation owners to make hasty and perhaps uncoordinated decisions. This will erode the value of MISO's transmission planning process and reduce the overall value of economic dispatch of the system, thereby unnecessarily increasing electric costs to consumers (page 4).
- Flexibility will be crucial to preserving reliability of the electric system and allowing for more cost-effective implementation (page 4).

**ENERGY VENTURES ANALYSIS, PARTICULARLY COST IMPACTS,
NOVEMBER 2014 (pages 4-5)**

<http://greatlakeslegalfoundation.org/wwcms/wp-content/uploads/2014/12/Nov-2014.-EVA-Energy-Market-Impacts-of-Recent-Federal-Regulations-on-the-Electric-Power-Sector.pdf>

- Annual power and gas costs for residential, commercial and industrial customers in America would be \$284 billion higher (\$173 billion in real terms) in 2020 compared to 2012—a 60% (37%) increase.
- Electricity cost increases represent \$177 billion (\$98 billion) and natural gas increases represent \$107 billion (\$75 billion) of the \$284 billion (\$173 billion) cost increase from 2012 to 2020.
- Average annual household gas and power bills would increase by \$680 (\$293) or 35% (15%) from 2012 to 2020.
 - Annual average electricity bills would increase approximately \$340 (\$102) or 27% (8%) from 2012 to 2020.
 - Annual average home gas heating bills would increase approximately \$340 (\$190) or 50% (28%) from 2012 to 2020.
- The cost of electricity and natural gas will be impacted in large part due to an almost 135% increase in the wholesale price of natural gas (100% in real dollars), from \$2.82/mmbtu in 2012 to approximately \$6.60/mmbtu (\$5.63) in 2020. These increases are due to baseline market and policy impacts between 2012 and 2020 as well as significantly increased pressure on gas prices resulting from recent EPA regulations on the power sector and the proposed CPP.
- On a percentage basis, the U.S. industrial sector would be affected most severely, as its total cost of electricity and natural gas would approach \$200 billion (\$170 billion) in 2020, a 92% (64%) increase from 2012.
 - Increased operational costs in the industrial sector are of particular concern for energy intensive industries in the U.S. such as aluminum, steel and chemicals manufacturing, which require low energy prices to compete.
 - Industrial power consumers would be expected to pass energy cost increases on to their customers, affecting the costs of goods purchased by American consumers over and above increased monthly utility bills.

U.S. Electricity and Natural Gas Cost Increases (Nominal Dollars)	2012	2020 CO ₂ Case	Increase (\$)	Increase (%)
Avg. Annual Residential Customer's Electricity and Natural Gas Bill (\$)	1,963	2,643	680	35%
Industrial Electricity Rate (¢/kWh)	6.7	10.5	3.8	56%
Total Cost of Electricity and Natural Gas for All Sectors (\$ Billion)	470	754	284	60%

U.S. Electricity and Natural Gas Cost Increases (Real Dollars)	2012	2020 CO ₂ Case	Increase (\$)	Increase (%)
Avg. Annual Residential Customer's Electricity and Natural Gas Bill (\$)	1,963	2,256	293	15%
Industrial Electricity Rate (¢/kWh)	6.7	8.9	2.2	33%
Total Cost of Electricity and Natural Gas for All Sectors (\$ Billion)	470	644	174	37%

^{*}Figures in Constant 2012 Dollars

NAVIGANT REPORT, MAY 2014 (PAGE 13)

http://appanet.files.cms-plus.com/PDFs/Markets_Matter_--_Hamal_Report.pdf

- Cost Implications of Unnecessary Volatility and Uncertainty – Lastly, while price signals in the RTO-operated markets provide some incentives for resource development, the role such signals can play in ensuring efficient reductions at a reasonable cost depends on predictability. Highly volatile prices that are not predictable introduce uncertainty that will detract from investments, driving up costs and raising customer costs over the long term. The volatile pricing produces an uncertain revenue stream for capacity resources, reducing the ability to finance investment with long-term debt. This is already a problem in capacity auction markets. Today's capacity prices are higher than necessary by 20% or more because of the price volatility inherent to the mandatory auctions. This problem is borne by customers, as they are the ones who pay for the resources over the long term.
- New requirements for CO2 emission reductions will change the operation of all electricity markets. Costs will be incurred and suppliers compensated under whatever policy choices are made. If policy options create unnecessary volatility in those costs and revenues, it will increase costs that will ultimately be passed on to customers. It could also lead to reliability issues. This is not a problem for programs involving a CO2 price based on a tax rate which should be predictable. But, programs where the price changes in response to supply and demand can introduce considerable uncertainty. In years of shortage, prices will escalate, potentially dramatically. In a market with merchant generation, a shortage of CO2 emission credits simply leads to a decision to shut down, with the potential for that outcome much greater if the owner has other sources of supply that will then enjoy even higher prices. Clearly the incentives are not aligned with ensuring reliable system operations. Regulatory provisions such as making additional emission credits available at a fixed price cap can act as a safety valve and ensure reliability is not threatened. But again, the interaction between these factors will be important.

“EPA’S CLIMATE REGULATIONS WILL HARM AMERICAN MANUFACTURING,” MARCH 2014

http://www.heritage.org/research/reports/2014/03/epas-climate-regulations-will-harm-american-manufacturing?mb=true#form_anchor

Mr. WHITFIELD. Thank you, Mr. Cicio. And thank all of you again for your comments.

And I would like to recognize myself for 5 minutes of questions.

These hearings are always so interesting because when you listen to the testimony, it raises so many questions in your mind, and sometimes you even question your sanity in some ways.

But I was listening to Ms. Hoffer and she was so emphatic in her legal defense of the 111(d) regulation, for example, and I know, Mr. Trisko, that you are an accomplished Clean Air Act lawyer as well. And in my opening comments I talked a little bit about—I am not an expert in the Clean Air Act but, as far as I know, in this proposed rule they basically view a State as a source because there is a number, a cap for that source, and so to comply with the regulation, as they say, to get States the flexibility to go outside the fence to address it. Would you agree with me that this is an unusual interpretation and legal analysis by EPA to decide that it gives them the authority to do this regulation?

Mr. TRISKO. Absolutely, Mr. Chairman. Now, Professor Tribe has discussed these issues at some length both in his testimony and in his written commentary on the rule.

There is another aspect of 111(d) relating to the term “standard of performance” that I believe is extremely problematic for EPA’s attempt to bring in energy efficiency outside-the-fence measures and renewable energy requirements also outside the fence that call into question the basic legal soundness of the EPA’s approach.

When you look at the fundamental architecture of the Clean Air Act with its scheme of regulation for criteria pollutants on the one hand, regulated largely under Titles I, II, and IV, and hazardous air pollutants such as mercury on the other hand, I think it makes perfect sense that in this instance sources that already are subject to a MACT requirement under Section 112 be exempt from Section 111(d) requirements because exposing them to 111(d) would in effect create a form of double regulation.

Moreover, had Congress intended the last time it visited the Clean Air Act in 1990 to include CO₂ regulation as a possibility under Section 111(d), I would note that CO₂ was addressed explicitly in the context of regulation of automotive tailpipe emissions in an amendment proposed in the Senate by Senators Worth and Heinz. The Senate rejected that amendment indicating that CO₂ emissions—

Mr. WHITFIELD. Absolutely.

Mr. TRISKO [continuing]. Should not be regulated—

Mr. WHITFIELD. You are exactly right and I appreciate your making that comment.

I might say also, Ms. Hoffer was talking about great progress that is being made in Massachusetts, and I understand how—and by the way, it exemplifies why some States get so upset about what is going on here. In your view, Massachusetts has been progressive and have really tried to address the issue. And one of the consequences of that is that Massachusetts has the third-highest electricity rates in the country per kilowatt hour, and between 2014, 2015 went up about \$3 per kilowatt hour. And that is a decision that they have made. But other States have decided that they don’t want to pursue that right now.

And the impact of this is on those people you talked about this, Mr. Trisko, that one-half of the household in the 31 States that you all looked at, 38 million households, their median income is \$23,000. And so when you talk about upping electricity rates on these people who have no other choice, it is a dramatic impact on them.

And I didn't have an opportunity to get go into it, Ms. Johnson, but I read your article. Here you have got one of the cleanest coal plants in America operating, you have spent \$500 million on it, it has a useful life up through 2045 and you are probably going to be forced to close it down. Is that correct?

Ms. JOHNSON. That is correct, Mr. Chairman.

Mr. WHITFIELD. I mean it is unbelievable.

My time is expired.

Mr. Rush, you are recognized for 5 minutes of questions.

Mr. RUSH. Yes, Ms. Hoffer, you have been the target of some pretty stringent remarks by the chairman and I just want to give you an opportunity to respond. So what is your reaction to some of the remarks concerning your fine State and what you are doing in Massachusetts and the cost of energy or electricity in your State? Do you want to respond?

Ms. HOFFER. I will briefly respond to Mr. Trisko's point. Since 1977, in fact, EPA has regulated the same sources under both 111(d) and 112. I just want to quickly give you the examples of those. So there is the regulation of landfills under Section 111(d) for methane and nonmethane organic compounds and under Section 12 for vinyl chloride ethylbenzene, toluene, and benzene. Then there is also regulating fluorides from phosphate fertilizer plants under Section 111(d) and regulating hydrogen fluoride and other pollutants under Section 112. So this is a, you know, long-standing practice of EPA.

And on the cost point, there are a couple things I would like to add. So with the Regional Greenhouse Gas Initiative, or RGGI, most of the States had to pass implementing legislation to put the RGGI program into work, and many of the participating States decided to take the allowance auction proceeds so the amount of money that is paid for an allowance to emit one ton of carbon dioxide and use that to promote energy efficiency.

So Massachusetts has been ranked in, you know, first or among the first States for energy efficiency in the country for the past couple of years because we have been able effectively to take that money and invest it back into energy efficiency in our State, which over time has had the effect of lower electric bills. And we had this exchange earlier today about electricity rates versus electricity bills, and for those of you who live in States where the electricity markets have been deregulated, you know when you get your energy bill there is a couple different charges on it. There is the charge for the electricity itself, there is often a distribution charge, which is for your local wires and the, you know, ability of the distribution companies to deliver service to you, and then there is a transmission charge. And what you see over time with efficiency improvements is that the total bill comes down.

And that is what you really want to focus on with this. And I think we can hear more from other witnesses on the panel today

as well, but huge beneficiaries of the energy efficiency under RGGI have been the industrial ratepayers, and that has been a real plus for Massachusetts.

Mr. RUSH. I want to thank you.

Dr. Tierney, according to the National Climate Assessment, if we do not seriously invest in addressing climate change impacts now, we can expect to see more expensive and costly future damages affecting almost every facet of our society from negative health impacts to stress on our infrastructure and water systems to harming our national security up to and including hurting our overall economic growth. In your professional opinion, do you believe that the proposed CPP is both flexible and provides States with feasible deadlines so as to not drastically impact reliability and/or costs for consumers? And also why is it so vital that we act now rather than down the road?

Ms. TIERNEY. Thank you very much for that question. As a co-lead author of the Energy Production and Use chapter of the National Climate Assessment, we took a survey of the literature on the costly impacts already being faced by Americans associated with the effects of climate change. Florida, for example, faces tremendous costs of a variety of sorts, and California, I think of California, and the well-known costly drought conditions are extraordinary in terms of their cost on consumers.

One of the things that is valuable to think about as we think about this Clean Power Plan, right now, we have the ability for people who are using fossil fuels to produce electricity are polluting for free with regard to carbon. No wonder it is cheap to do that because you are really dumping some kind of cost on somebody else. And as a result of that, the Clean Power Plan provides a lot of flexibility for States to figure out how to address that problem quite creatively. I think of a State like Florida, which indeed hangs as a separate part of the electric system. Florida has the ability to establish some kind of mutual assistance program with other States, enabling the two States to have more affordable compliance programs for both of them.

Mr. WHITFIELD. The gentleman's time is expired.

At this time I recognize the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. I thank the chairman.

Welcome, Mr. Trisko, Ms. Johnson, Ms. Tierney, Ms. Hoffer, Mr. Sunday, Mr. Cicio. Long day, I know that, but thank you for coming this afternoon.

My first question would be for Mr. Trisko and Ms. Johnson. And in your testimony, sir, you talked about how our seniors may be hit the hardest by increases in electricity prices. And you also say they may have the lowest ability to absorb these costs with their energy demands. And my mother-in-law, my kids call her Mamie, is case in point. She moved from cool, dry, Southern California to hot, humid southeast Texas 3 years ago. She is on a fixed income. Energy is one of her biggest expenses, air-conditioning. If she has some increase in prices because of this rule, she might not have the quality of life she has currently because her prices will go up. She might not be able to keep that air-conditioner where she wants it

and I don't want that to happen to her. So could you elaborate on the issues seniors face across America, sir?

Mr. TRISKO. I am happy to, Congressman. I think it is important to bear in mind when looking at the electricity price increases that I cite in my testimony to bear in mind that the NERA analysis, and I have used the most conservative NERA numbers in this report, including all four EPA building blocks, but the NERA analysis included in its baseline the rate increases associated with the EPA mercury rule, the MATS rule, and that compliance is beginning now and will continue over the next several years. There will be significant increases in electricity prices as a consequence of the compliance with the MATS rule. So these numbers are additive on top of an increasing trend.

The impact on fixed-income seniors is fairly obvious because most of the fixed-income seniors fall into the lower-income categories either below \$50,000 or in many cases below \$30,000 a year. You are basically looking at Social Security recipients receiving at best COLA increases, which barely keep pace with the rate of inflation.

So if your electric bill goes up by let's say 15 to 20 percent in real terms compared to what it is today as a consequence of—

Mr. OLSON. Like my Mamie, like my mother-in-law, yes, sir.

Mr. TRISKO. Well, as a consequence to these regulations, you are for those individuals really creating a question of heating versus eating, and there is survey evidence that bears that out.

Mr. OLSON. Ms. Johnson with Florida, large senior population, how does that impact your seniors back home in Florida?

Ms. JOHNSON. Very similar situation, Congressman. Thank you for the question. As I mentioned, a third of our population that we serve have incomes below the poverty level, and over 75 percent of them have incomes below 75,000, although that is not poverty-level income. That is in the lower to mid-bracket of incomes. And as Mr. Trisko mentioned and I agree, those lower-income households spend more money on their electricity service per month. If you increase their bills, if you increase the rate that they pay, even if you are trying to work with them to decrease the amount of electricity that they use, they will disproportionately be impacted negatively by an increase.

Mr. OLSON. And this is number two because seniors feel heat more than normal people. They want the air colder. My mother-in-law keeps it really cold because that is what she is used to and her body has told her that she can't take that extreme heat. So thank you for your perspective.

My final question is for you, Mr. Sunday. You mentioned in your testimony that Pennsylvania has a competitive advantage because of low energy prices. I mean it sounds like jobs are coming to Pennsylvania, flocking there. And as you know, the steel industry went away to Asia about a decade ago, so how will these increased prices from this rule impact your ability to recover and thrive in Pennsylvania?

Mr. SUNDAY. We are on the verge of a manufacturing renaissance and frankly we cannot afford higher energy prices. I mentioned the energy efficiency laws. To the point of steel, the Industrial Energy Consumers of Pennsylvania gave us some data that the State's standing energy efficiency laws in some utility jurisdic-

tions add \$40,000 a month to their bills. That is quite a few employees that they can hire a year.

We stand on the precipice of turning things around in Pennsylvania but, you know, we don't want to turn back now.

Mr. OLSON. Mr. Cicio, you mentioned jobs coming back to America. How about jobs leaving if this rule goes into effect? How many jobs will fly overseas again?

Mr. CICIO. Well, we don't know exactly how many jobs because we won't know that until we find out what the final rule is.

But let's talk practical terms here. Let's just look at two industries that use a lot of electricity: steel and aluminum. The percent of electricity of operating costs of aluminum is about 30 percent of the cost. Relatively small changes has a huge impact on whether they produce here or produce somewhere in the world. Steel is about 20 to 25 percent. So you can see that high operating cost has a huge sensitivity to price change.

Mr. OLSON. Thank you. I yield back.

Mr. WHITFIELD. Thank you. At this time I recognize the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman.

I know everyone is concerned about rates and reliability, so, Ms. Tierney, I wanted to ask you a little bit about rates. It appears to me that the EPA analysis shows some increases of electricity rates but it also shows that by the end of the compliance period electricity bills are expected to be lower. So, first, why bills would be lower at the end of the program, and second, for the projected rate increases, how do they compare to rate increases that we have already seen over time?

Ms. TIERNEY. Thank you, Congressman Pallone.

One of the reasons why EPA projects that there will be lower electricity bills is the point that has been described previously. If you are using less electricity because of energy efficiency, you are buying fewer units of electricity. Even though the unit price of electricity might rise in a small percentage, your total bill in terms of the quantity you use and the price, that is going to lead to a lower cost impact.

My colleague here from Massachusetts has just reported that one of the things we have observed in the Northeast and mid-Atlantic States is those strong investments in energy efficiency get you two bangs for bucks. It means that there are a lot of jobs locally in the local economy to put on insulation in a variety of things. The consumer ends up using electricity and then over time you don't have to run the most expensive power plants on the system to produce electricity, and it is a virtuous cycle in that regard. So that is the reason why the EPA's logic there is there will be lowered bills over time.

Mr. PALLONE. Can I ask you, are there larger forces in the Clean Power Plan at work with regard to increased rates? Is the power system already undergoing change for reasons unrelated to the Clean Power Plan?

Ms. TIERNEY. Absolutely. Since the shale gas revolution began to lower the price of a domestic fossil fuel, that has put pressure on existing aged inefficient coal-fired power plants. We have seen reductions in those coal-fired power plants in terms of their oper-

ations. We have seen no reliability problems associated with that. And in fact, we see today the announced retirements of coal plants around the country are being flanked on the other side with an equal amount of proposals for new gas-fired power plants, new renewable infrastructure, new transmission, new gas pipeline infrastructure. As a result of that, we are seeing the market respond very favorably to the signals about lowering supply.

Mr. PALLONE. Well, in the same vein that you recently took a look at the impact of the Clean Power Plan on electric systems reliability. Do these doomsday claims have any merit?

Ms. TIERNEY. They don't in my opinion. The doomsday scenario is helpful to all of us because here we are talking about it. It does not suggest that everybody will stand by. I have never seen the mission-oriented electric industry stand by when it has to face a new reliability issue. They will do that now. States are very responsible for this so I think that the worst-case scenario, gloomy outlook is one that we won't see happen.

Mr. PALLONE. Thank you.

Ms. Hoffer, Massachusetts has come out in support of the EPA's proposed Clean Power Plan and it is clear from your testimony that EPA has the legal authority for the plan. Could you briefly comment on the logic of legal challenges to a proposed rule? How about legislation that seeks to halt, alter, or undermine a proposed rule? I would say that challenging a proposed rule either in the course of this legislation is a bit premature but what do you think?

Ms. HOFFER. It is absolutely premature and there is no need for it. And in fact, as Administrator McCabe said earlier, it would be extremely disruptive. Climate change is an existential threat to humanity, and there is a significant cost associated to that, which affects all sectors of the economy. So one way to think about it is it isn't the status quo compared to doing the Clean Power Plan, but increasingly expensive climate response costs compared to doing something now, which is already a bit late to reduce and abate the threat.

EPA has estimated that climate and weather disasters have affected the American economy to the tune of over \$100 billion since 2012 alone, so we need to be doing things as quickly as possible and there is already a rational legal limitation. If, for example, as I explained earlier, a moving party came into the court and wanted to challenge the final rule and was able to make out a case that the rule should be stayed during the pendency of that challenge based on the traditional standards that courts typically apply for a stay, a stay would be granted. So we already have a way and a legal mechanism that is well recognized that could be applied in this instance so it is not necessary.

Mr. PALLONE. Thank you, Mr. Chairman.

Mr. WHITFIELD. The gentleman's time is expired.

We have two votes on the House Floor. I believe we are going to be able to finish our questions before we go, so at this time I would recognize the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you. I will try to be brief, very quick on this.

The statements earlier today by Ms. McCabe that the increased cost of about \$8.5 billion is going to lead to lower utility bills I found fairly incredible. And it is just further manifestation I think of this disturbing trend coming from the administration over the years and calls into question I think their credibility.

Look back on some of the statements that we have dealt with. Al Qaeda is on the run in 2012. 2014 we heard Yemen is a counter-terrorism success story and we found that to be false as well. We heard over the years that the more EPA regulations create jobs. For every million dollars in regulations, it creates 1 ½ jobs. We are hearing about this proposed Iranian deal is good for Israel, but the Prime Minister says absolutely that is false. Now I am hearing this is going to save money for the consumer.

So, Mr. Trisko, can you respond to that? I just thought that was an outrageous statement and really called into question a lot of the credibility.

Mr. TRISKO. Congressman, yes, thank you. The reason that EPA has presented such a low estimate of the annual compliance costs with the Clean Power Plan is that it has netted out from those costs the assumed savings from energy efficiency initiatives. Now, NERA's analysis using the four building blocks of the EPA rule, and this is the cost to consumers of investments in energy efficiency to meet EPA targets, indicates a cost to consumers, and this is in net present value terms, of \$560 billion. That means Americans will be asked by this rule, American consumers will be asked to spend \$560 billion in investments in energy efficiency.

Congressman, I believe that estimate of that extent of energy efficiency investment is simply fatuous. As of just a few years ago the most recent data—and these don't change very quickly—the average American house is owned for a period of 7 to 8 years. You cannot recover a major investment such as in replacing sliding glass doors or an HVAC, a heat pump system, you cannot recover those costs in the space of 7 to 8 years. You can do relatively simple things like attic insulation and weather-stripping and that sort of thing, but those don't get you close to the targets that EPA is advocating for States in this rule.

So if you are going to have energy efficiency to the extent that EPA is advocating it, consumers ought to be able to shell out on the order of a half a trillion dollars to pay for it.

Mr. PALLONE. I yield back the balance of my time to help out.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you very much.

Ms. Hoffer, we are just going to disagree on the law. Mr. Trisko, you and I are going to agree on the law as to whether or not the EPA has authority under 111(d). But I would submit to both of you that in this case on Thursday of this week the EPA is going to argue in front of the U.S. Court of Appeals for the DC Circuit that it is premature to take the question up as to whether or not they have authority under 111(d).

Now, there are some other arguments as well, but at the very least it would seem to me in the matter of efficiency settling this issue more quickly as to whether or not there is even authority to

go forward with the regulations would be in the interest of the American public. Mr. Trisko, would you not agree with that, that the EPA ought to say, OK, at least asked to whether or not we have authority since we are already regulated under 112, can the court rule on that so we can move forward to the Supreme Court? Because we all know that issue is going to end up in the Supreme Court, wouldn't you agree?

Mr. TRISKO. Congressman, I would agree. And let me cite another precedent that is occurring in the here and now. The Supreme Court will hear arguments and render a decision in the challenge to EPA's mercury rule. There are power plants that are being retired, basically being put into stranded asset category today, this month, this year, tens of thousands of megawatts of capacity. The Supreme Court could vacate the EPA mercury rule. In that event, wouldn't it have made sense before those plants were retired and rendered stranded assets—

Mr. GRIFFITH. And those jobs lost.

Mr. TRISKO [continuing]. To have the answer?

Mr. GRIFFITH. Yes, sir.

Mr. TRISKO. To have the answer.

Mr. GRIFFITH. And that screams out for this proposed draft to be passed, wouldn't you agree?

Mr. TRISKO. Yes, sir.

Mr. GRIFFITH. All right. And, Ms. Johnson, likewise, you would feel that you are about to have some stranded cross. Wouldn't you like to know in advance that the EPA at least has the authority to promulgate these regulations? You might still be opposed to them, but wouldn't you like to know whether they have the authority before you are forced to shut down that facility?

Ms. JOHNSON. I certainly would, Congressman.

Mr. GRIFFITH. And that screams for this piece of legislation, this draft legislation to be passed, wouldn't you agree?

Ms. JOHNSON. Yes, I agree.

Mr. GRIFFITH. And you would agree then with the State Corporation Commission of Virginia when they said that because of stranded costs in part but contrary to the claim that rates will go up but bills will go down, experience of cost in Virginia make it extremely unlikely that either electric rates or bills in Virginia will go down as a result of the proposed regulation. You certainly have no reason to disagree in Virginia and for the people that you serve in your area would that also be true?

Ms. JOHNSON. I believe that is true. I don't know how you could retire a plant prematurely when there is valuable life left in it and have to replace new generation to take that up and pay for it twice and not have the costs go up.

Mr. GRIFFITH. Yes, ma'am.

And, Mr. Cicio, one of the things I wanted to ask you about if I heard your testimony correctly, the Chinese produce how much more product today than we do percentagewise?

Mr. CICIO. I believe it is 23 percent.

Mr. GRIFFITH. About 20 some percent and yet their carbon footprint is how much more for that production?

Mr. CICIO. Three hundred percent more.

Mr. GRIFFITH. So when we make it difficult for businesses like Mr. Sunday's businesses to do business in Virginia, United States, Pennsylvania for Mr. Sunday's case, we send some of those jobs—not all them but some of them will go to places like China or India, isn't that correct?

Mr. CICIO. That is correct. Turn it around. Look at it this way. If you create jobs in the United States and you don't import from China, you are reducing global emissions.

Mr. GRIFFITH. So this may actually have a contrary effect on the environment where everybody is claiming that this will help the environment by pushing jobs to places like China, Vietnam, India, wherever—

Mr. CICIO. That is correct.

Mr. GRIFFITH [continuing]. We could be making the environment worse. And I note that India has said they are not planning on cutting back on carbon. They are going to use more carbon, they are going to use more coal because it is affordable to produce the energy, to produce jobs, and they want to catch up with the U.S. and China, isn't that correct?

Mr. CICIO. That is correct. And even Japan just last week announced they will build 40 coal-fired power plants, so it is not just developing countries.

Mr. GRIFFITH. And the Germans as well are building some more coal plants. And of course one of the things that people often forget because they will say that we are the—I think somebody earlier tonight said we are, you know, second only to China in carbon footprint. We are the world's third-largest or most populous country, we are the world's largest economy, and we are currently producing the second-most products, so that accounts for some of this, and we have benefited the rest of the world with our innovations. We can benefit them now with our innovations without the force of Government regulation, particularly this particular regulation we are discussing today, the Clean Power Plan, by moving forward to make us better and more efficient in the factories as opposed to debilitating folks like in my district who don't have the money to spend on these increased electricity.

Thank you so much. I yield back.

Mr. WHITFIELD. Thank you. Mr. Rush?

Mr. RUSH. Mr. Chairman, I ask unanimous consent to enter a number of letters into the record from various organizations, public health organizations, environmental public interests, environmental justice organizations, and consumer groups. So I ask unanimous consent that these letters be entered into the record.

Mr. WHITFIELD. Without objection.

[The information appears at the conclusion of the hearing.]

Mr. WHITFIELD. And then I would like to submit for the record by unanimous consent the comments that were submitted to EPA regarding its proposed 111(d) rule by the National Black Chamber of Commerce, the United States Hispanic Chamber of Commerce, and National Association of Realtors, and would also like to submit a statement in support of the Ratepayer Protection Act by the National Association of Home Builders.

[The information appears at the conclusion of the hearing.]¹

Mr. WHITFIELD. So that concludes our hearing. You all were very patient. Thank you very much for taking time to focus on this important issue. We look forward to working with all of you as we move forward. We will keep the record open for 10 days.

And that will conclude today's hearing. Thank you very much.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

¹The report entitled "Analysis of Legal Basis for EPA's Proposed Rule on Carbon Pollution Emission Guidelines for Existing Stationary Sources" has been retained in committee files and also is available at <http://docs.house.gov/meetings/IF/IF03/20150414/103312/HHRG-114-IF03-20150414-SD004.pdf>.

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[DISCUSSION DRAFT]114TH CONGRESS
1ST SESSION**H. R.** _____

To allow for judicial review of any final rule addressing carbon dioxide emissions from existing fossil fuel-fired electric utility generating units before requiring compliance with such rule, and to allow States to protect households and businesses from significant adverse effects on electricity ratepayers or reliability.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To allow for judicial review of any final rule addressing carbon dioxide emissions from existing fossil fuel-fired electric utility generating units before requiring compliance with such rule, and to allow States to protect households and businesses from significant adverse effects on electricity ratepayers or reliability.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ratepayer Protection
5 Act of 2015”.

1 **SEC. 2. EXTENDING COMPLIANCE DATES OF RULES AD-**
 2 **DRESSING CARBON DIOXIDE EMISSIONS**
 3 **FROM EXISTING POWER PLANTS PENDING**
 4 **JUDICIAL REVIEW.**

5 (a) EXTENSION OF COMPLIANCE DATES.—

6 (1) EXTENSION.—Each compliance date of any
 7 final rule described in subsection (b) is deemed to be
 8 extended by the time period equal to the time period
 9 described in subsection (c).

10 (2) DEFINITION.—In this subsection, the term
 11 “compliance date”—

12 (A) means, with respect to any require-
 13 ment of a final rule described in subsection (b),
 14 the date by which any State, local, or tribal
 15 government or other person is first required to
 16 comply; and

17 (B) includes the date by which State plans
 18 are required to be submitted to the Environ-
 19 mental Protection Agency under any such final
 20 rule.

21 (b) FINAL RULES DESCRIBED.—A final rule de-
 22 scribed in this subsection is any final rule to address car-
 23 bon dioxide emissions from existing sources that are fossil
 24 fuel-fired electric utility generating units under section
 25 111(d) of the Clean Air Act (42 U.S.C. 7411(d)), includ-
 26 ing any final rule that succeeds—

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3

1 (1) the proposed rule entitled “Carbon Pollu-
2 tion Emission Guidelines for Existing Stationary
3 Sources: Electric Utility Generating Units” pub-
4 lished at 79 Fed. Reg. 34830 (June 18, 2014); or

5 (2) the supplemental proposed rule entitled
6 “Carbon Pollution Emission Guidelines for Existing
7 Stationary Sources: EGUs in Indian Country and
8 U.S. Territories; Multi-Jurisdictional Partnerships”
9 published at 79 Fed. Reg. 65482 (November 4,
10 2014).

11 (c) PERIOD DESCRIBED.—The time period described
12 in this subsection is the period of days that—

13 (1) begins on the date that is 60 days after the
14 day on which notice of promulgation of a final rule
15 described in subsection (b) appears in the Federal
16 Register; and

17 (2) ends on the date on which judgment be-
18 comes final, and no longer subject to further appeal
19 or review, in all actions (including actions that are
20 filed pursuant to section 307 of the Clean Air Act
21 (42 U.S.C. 7607))—

22 (A) that are filed during the 60 days de-
23 scribed in paragraph (1); and

24 (B) that seek review of any aspect of such
25 rule.

1 **SEC. 3. RATEPAYER PROTECTION.**

2 (a) EFFECTS OF PLANS.—No State shall be required
 3 to adopt or submit a State plan, and no State or entity
 4 within a State shall become subject to a Federal plan, pur-
 5 suant to any final rule described in section 2(b), if the
 6 Governor of such State makes a determination, and noti-
 7 fies the Administrator of the Environmental Protection
 8 Agency, that implementation of the State or Federal plan
 9 would—

10 (1) have a significant adverse effect on the
 11 State's residential, commercial, or industrial rate-
 12 payers, taking into account—

13 (A) rate increases that would be necessary
 14 to implement, or are associated with, the State
 15 or Federal plan; and

16 (B) other rate increases that have been or
 17 are anticipated to be necessary to implement, or
 18 are associated with, other Federal or State en-
 19 vironmental requirements; or

20 (2) have a significant adverse effect on the reli-
 21 ability of the State's electricity system, taking into
 22 account the effects on the State's—

23 (A) existing and planned generation and
 24 retirements;

25 (B) existing and planned transmission and
 26 distribution infrastructure; and

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5

1 (C) projected electricity demands.

2 (b) CONSULTATION.—In making a determination
3 under subsection (a), the Governor of a State shall consult
4 with—

5 (1) the public utility commission or public serv-
6 ice commission of the State;

7 (2) the environmental protection, public health,
8 and economic development departments or agencies
9 of the State; and

10 (3) any regional entity (as defined in section
11 215 of the Federal Power Act (16 U.S.C. 824o))
12 whose jurisdiction includes the State.

April 13, 2015

Dear Representative,

On behalf of our millions of members, the undersigned organizations urge you to oppose Representative Whitfield's Ratepayer Protection Act. This dangerous legislation undermines climate action by allowing states simply to "opt out" of the EPA's Clean Power Plan (CPP), which sets the first national standards limiting carbon pollution from power plants. It also seeks to delay implementation of the CPP indefinitely until every polluter's lawsuit has been litigated.

The Clean Air Act was enacted in 1970 by an overwhelming bipartisan majority and signed into law by President Richard Nixon. Congressional leaders rightly recognized that air pollution is a national problem and leaving pollution control entirely to the states had failed. This state-federal partnership has made the Clean Air Act one of the most successful public health laws in our nation's history. Since 1970, we have cut many dangerous air pollutants by 90 percent or more, while our economy tripled in size. Millions of lives have been saved and illnesses avoided.

The Clean Air Act directs the Environmental Protection Agency to set national clean air standards – in this case, standards for carbon pollution from the nation's power plants. The law gives states the first shot at meeting these national standards, by writing state-specific pollution control plans tailored to local conditions, with the flexibility to meet the emissions reductions required in the most cost-effective way. But if a state cannot, or will not, hold its own polluters accountable, the law guarantees that communities have a federal back-stop.

This bill strikes at the heart of the federal Clean Air Act by letting each state simply walk away from national clean air requirements, giving polluters free rein to continue to dump unlimited amounts of carbon pollution into our air. The legislation sets a dangerous precedent by allowing any state to decide that meeting national clean air standards is merely optional. It would destroy the national guarantee that makes the Clean Air Act work: the assurance that EPA will directly regulate the big polluters if a state cannot, or will not do so.

Whitfield's bill would also delay implementation of the Clean Power Plan in every state until every polluter's lawsuit has been fully litigated and appealed, including to the Supreme Court – a process that can take years. This is not the way the Clean Air Act works and is just another way to delay climate action as long as possible.

The Clean Air Act already provides for "staying" implementation during lawsuits if the litigants can prove valid reasons. This bill would instead stall the Clean Power Plan by default, as long as a lawyer can keep the case alive even if there is no proof of irreparable harm or likelihood of success.

The Whitfield bill would destroy the national guarantee that makes the Clean Air Act work by simply letting any state just "opt out" of meeting national carbon standards and it would delay critical carbon pollution standards indefinitely until every polluter's lawsuit has run its course.

We urge you to oppose this latest attack on our health, the Clean Air Act, and efforts to reduce harmful carbon pollution.

Sincerely,

Center for Biological Diversity
Clean Air Council
Clean Water Action
Earthjustice
Environmental Law and Policy Center
Environment America
Environment California
Environment Maine
Environment New Jersey
Environment New Mexico
Environment Virginia
Environmental Advocates of New York
Environmental Defense Fund
Environmental Law and Policy Center
Friends of the Earth – US
Green Latinos
Interfaith Power & Light
KyotoUSA
League of Conservation Voters
League of Women Voters
Moms Clean Air Force
Natural Resources Defense Council
PennEnvironment
PennFuture
Physicians for Social Responsibility
Protect Our Winters
Public Citizen
Rachel Carson Council
Safe Climate Campaign
Sierra Club
Southern Environmental Law Center
The Center for the Celebration of Creation
Union of Concerned Scientists
Voces Verdes
WE ACT for Environmental Justice
Western Organization of Resource Councils

Public Citizen * Consumers Union

April 13, 2015

RE: Ratepayer Protection Act

Dear Representative,

We urge you to oppose Representative Whitfield's Ratepayer Protection Act. The Act permits states to opt out of the EPA's proposed carbon pollution rule, known as the Clean Power Plan. It would also would delay the rule's implementation until every lawsuit challenging it has completed, a process that could take decades. The Act is framed as a consumer protection measure, but it is the opposite. It permits a state to opt out of the Clean Power Plan if the governor finds that implementing the Clean Power Plan would "have a significant adverse effect" on ratepayers, taking into account "rate increases" or reliability problems due to the Plan.

The Act misconstrues the Clean Power Plan, which is good for consumers. And it is mistaken to focus on electricity *rates*, which may rise modestly under the Plan, rather than consumers' actual electricity *bills*, which should go down.

The Clean Power Plan will benefit consumers. Climate change poses a severe threat to American consumers, and in particular to vulnerable populations. A few of the most salient risks include:

- higher taxes and market prices to cover the costs of widespread damage to property and infrastructure from extreme weather;
- diminished quality and higher prices for food and water, heightening food insecurity for America's most vulnerable populations; and
- increased illness and disease from extreme heat events, reduced air quality, increased food-borne, water-borne, and insect-borne pathogens.¹

By curbing carbon pollution, the Clean Power Plan will benefit consumers by mitigating these harms.

The Clean Power Plan will lower consumers' electricity bills. As a general matter, the Clean Power Plan is likely to lower consumer costs, not raise them, because it will spur improvements in energy efficiency. Although electricity prices may rise modestly under the Plan, consumers will use less electricity, resulting in lower bills overall. The EPA projects that the Plan will lower consumer bills by 8.4 percent by 2030.² A Public Citizen analysis suggests that the EPA estimate is conservative, overestimating the cost of efficiency programs and underestimating how much

¹ See U.S. GLOBAL CHANGE RESEARCH PROGRAM, HIGHLIGHTS OF CLIMATE CHANGE IMPACTS IN THE UNITED STATES: THE THIRD NATIONAL CLIMATE ASSESSMENT 8-9, 12-13, 33-47 (2014).

² EPA, REGULATORY IMPACT ANALYSIS FOR THE PROPOSED CARBON POLLUTION GUIDELINES FOR EXISTING POWER PLANTS AND EMISSION STANDARDS FOR MODIFIED AND RECONSTRUCTED POWER PLANTS Table 3-43 (2014).

progress the states can make on efficiency. Consumer costs are likely to decline by even more than the agency projects.³

States should serve their consumers and protect vulnerable populations. If these consumer benefits do not materialize, then it is likely the states, not the EPA, who will bear responsibility. The states can take a lead role in implementing the Clean Power Plan by writing their own compliance plans. State policymakers can choose to implement the Plan in a manner that benefits or harms ratepayers. The Act is wrong to excuse the states from those duties and suggest that the responsibility for harming consumers lies with section 111(d) of the Clean Air Act, a statute that protects the public by safeguarding our health.

We strongly encourage members to oppose the misnamed Ratepayer Protection Act and to support the Clean Power Plan. Thank you for considering our views.

Sincerely,

David Arkush, Managing Director
Public Citizen's Climate Program

Shannon Baker-Branstetter, Policy Counsel, Energy and Environment
Consumers Union

³ See PUBLIC CITIZEN ET AL., COMMENTS ON CLEAN POWER PLAN, 7-10 (2014), <http://pubc.it/1tT1Az2>.



PUBLICCITIZEN

Consumer Costs and the EPA Clean Power Plan

Opponents of the Clean Power Plan argue that it will harm consumers by raising electricity costs. This claim is false. The Plan will be incredibly beneficial to consumers and the economy generally. This document sets the facts straight.

The Clean Power Plan Will Lower Consumer Bills, Not Raise Them

The EPA estimates that electricity bills will be 8.4 percent lower in 2030 due to the Clean Power Plan, largely because of energy efficiency improvements.¹

Public Citizen's analysis suggests that the EPA is being too cautious, and the consumer benefits will be far greater. The agency overestimates the cost of efficiency programs and underestimates how much progress the states can make on efficiency.²

Opponents of the Clean Power Plan argue that it will hurt consumers by raising electricity prices.³ The claim is misleading. The Plan will raise electricity prices modestly, but its efficiency gains will more than offset the price increases. As a result, consumer bills will decline.⁴

The Clean Power Plan Will Benefit the Economy, Not Cost It

The EPA estimates that the Clean Power Plan will cost just \$5.5 to \$8.8 billion per year, in exchange for \$32 to \$93 billion in benefits.⁵ In other words, the rule effectively won't cost anything. Rather, it will contribute \$26 billion to \$84 billion to the economy per year—or \$260 billion to \$840 billion over 10 years. After 10 years, the vast

majority of the rule's costs will have been incurred, but many of its benefits will continue in perpetuity.

Failing to Mitigate Climate Change Is Far More Expensive Than Combatting It

Extreme weather related to climate change is already damaging property and infrastructure.⁶ This damage will only increase with time. All consumers—all Americans—bear the cost of repairs through higher taxes and market prices.

- A 2008 analysis found that costs of climate change from four factors—hurricane damage, real estate losses, energy-sector costs, and water costs—would range from \$271 billion in 2025 to \$1.9 trillion in 2100.⁷
- A 2014 analysis projects costs of \$525 billion over the next 15 years just from climate-change-related damage to coastal property and infrastructure.⁸
- The same study found that, on our present course, \$238 billion to \$507 billion worth of property will simply be below sea level by 2100.⁹
- A 2014 White House analysis concluded that warming of 3°C instead of 2°C would cause an additional drag of 0.9 percent on the global economy.¹⁰

Climate change also raises food prices and diminishing food security because it harms agriculture through extreme weather, increased weeds, pests and disease, and increased demand for energy and water.¹¹

Infrastructure Improvements to Combat Climate Change May Cost Little More Than Business-as-Usual

The U.S. energy infrastructure is aging, and much of it will need to be replaced in the near future. For example, the average U.S. coal plant is more than 42 years old,¹² while the expected life of a coal-fired electricity generator is 30 years.¹³

Upgrading our infrastructure on a slightly faster timetable and in a more climate-friendly manner may cost little more than business-as-usual. A 2014 study by the Global Commission on the Economy and Climate found that an ambitious plan to combat climate change worldwide would cost only 5 percent more than the amount we are likely to spend to upgrade infrastructure anyway.¹⁴

Energy efficiency and renewables are already far cheaper than fossil fuels when one is considering new construction. Energy efficiency costs \$25 per MWh of electricity saved. On-shore wind farms and utility-scale solar cost \$59 and \$79 per MWh to build, respectively. Combined-cycle natural gas plants, coal plants, and nuclear plants, cost \$94, \$108.50, and \$112 respectively.¹⁵

The Clean Power Plan Will Boost Public Health

In addition to its pure economic benefits, the Clean Power Plan will help consumers by boosting their health. A recent study of a scenario similar to the EPA plan found that each year it would prevent:

- 3,500 premature deaths (nine each day);¹⁶
- 1,000 hospital admissions for heart and lung disease;¹⁷ and
- 220 heart attacks.¹⁸

EPA estimates that the annual economic value of the quantifiable health co-benefits of its Plan will range from \$14 to \$37 billion in 2020 and \$23 to \$58 billion in 2030.¹⁹ There are many more

health benefits that the agency did not attempt to quantify or monetize, such as reductions in cancer and lost IQ points.²⁰

ENDNOTES

¹ EPA, REGULATORY IMPACT ANALYSIS FOR THE PROPOSED CARBON POLLUTION GUIDELINES FOR EXISTING POWER PLANTS AND EMISSION STANDARDS FOR MODIFIED AND RECONSTRUCTED POWER PLANTS Table 3-43 (2014) (*hereinafter* "RIA").

² See PUBLIC CITIZEN ET AL. COMMENTS ON CLEAN POWER PLAN, 7-10 (2014), <http://pubc.it/1kT1Az2>.

³ See, e.g., David Arkush, A Junk "Study" from the 60-Plus Association, CITIZENVOX, Oct. 6, 2014, <http://pubc.it/1sZeeQa>; David Arkush, Another Junk "Study" from 60 Plus on the EPA's Clean Power Plan, CITIZENVOX, Nov. 11, 2015, <http://pubc.it/1zhuP3v>.

⁴ See *Id.*

⁵ 79 Fed. Reg. at 34,943-44.

⁶ *Id.* at 12-13, 38-41.

⁷ FRANK ACKERMAN ET AL., THE COST OF CLIMATE CHANGE V (2008). The figures given are in 2006 dollars.

⁸ RISKY BUSINESS, THE ECONOMIC RISKS OF CLIMATE CHANGE IN THE UNITED STATES 3 (2014).

⁹ *Id.*

¹⁰ EXECUTIVE OFFICE OF THE PRESIDENT, THE COST OF DELAYING ACTION TO STEM CLIMATE CHANGE 2 (2014).

¹¹ *Id.* at 8, 33, 46-47.

¹² Steven Mufson, *Vintage U.S. Coal-Fired Power Plants Now an 'Aging Fleet of Clunkers'*, WASH. POST, June 13, 2014.

¹³ See Union of Concerned Scientists, Ripe for Retirement: The Case for Closing America's Costliest Coal Plants (2012), http://www.ucsusa.org/clean_energy/smart-energy-solutions/decrease-coal/ripe-for-retirement-closing-america-s-costliest-coal-plants.html#.VQdGQY7QXig.

¹⁴ See GLOBAL COMMISSION ON THE ECONOMY AND CLIMATE, BETTER GROWTH BETTER CLIMATE (2014).

¹⁵ LAZARD'S LEVELED COST OF ENERGY—VERSION 8.0 2 (2014).

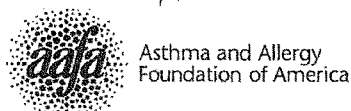
¹⁶ JOEL SCHWARTZ ET AL., HEALTH CO-BENEFITS OF CARBON STANDARDS FOR EXISTING POWER PLANTS 3 (2014), <http://pubc.it/1rnbw2l>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ RIA Table ES-6.

²⁰ RIA at ES-11-12.



April 13, 2015

Dear Representative:

The undersigned public health and medical organizations urge you to oppose the "Ratepayer Protection Act," drafted by Representative Ed Whitfield. Far from protecting Americans, this bill would put lives at risk by delaying and blocking critical clean air protections.

Carbon pollution leads to climate change and threatens Americans' health. As U.S. Surgeon General Vivek Murthy, MD, MBA said during National Public Health Week, "We know that climate change means higher temperatures overall, and it also means longer and hotter heat waves... higher temperatures can mean worse air in cities, and more smog and more ozone. We know that more intense wildfires will mean increased smoke in the air. And we know that earlier springs and longer summers mean longer allergy seasons."

These impacts of climate change contribute to asthma attacks and other respiratory problems, cases of heat stroke, and premature deaths. The U.S. Environmental Protection Agency's proposed Clean Power Plan will help the nation take important steps toward protecting Americans' health from these threats. Not only would the Plan give states flexible tools to reduce the carbon pollution that causes climate change, these crucial tools would also lower other deadly pollutants at the same time, preventing up to 6,600 premature deaths and 150,000 asthma attacks every year by 2030.

Unfortunately, Representative Whitfield's bill would put lives at risk by dramatically weakening and delaying vital Clean Air Act safeguards. Specifically, the bill allow governors to "opt out" of complying with the final Clean Power Plan. The bill would also prohibit EPA from implementing the Clean Power Plan until all court actions related to the plan are complete, indefinitely delaying these lifesaving protections. Moreover, the bill would prevent EPA from putting a federal pollution cleanup plan in place in a state where a governor refused to comply. Residents of these states – especially those most vulnerable, including children, the elderly, and people with asthma – would not see the health benefits from air pollution reductions that would come with the cleanup plan.

We ask you to prioritize the health of your constituents and oppose Representative Whitfield's dangerous bill.

Sincerely,

Allergy & Asthma Network
 American Lung Association
 American Public Health Association
 Asthma and Allergy Foundation of America
 Health Care Without Harm
 Trust for America's Health

Statement for the Record

On behalf of the
National Association of Home Builders

Before the
House Energy and Commerce Committee
Subcommittee on Energy and Power

Hearing: "EPA's Proposed 111(d) Rule for Existing Power Plants, and H.R. __, Ratepayer Protection Act"

April 14, 2015

Contact Info:
Billie Kaumaya
NAHB
1201 15th Street, NW
Washington, DC 20005
202-266-8570
bkaumaya@nahb.org

Introduction

NAHB appreciates the opportunity to submit this statement to the House Energy and Commerce Committee in response to the record of the hearing titled, "EPA's Proposed 111(d) Rule for Existing Power Plants, and H.R. ___, Ratepayer Protection Act." NAHB wishes to express our serious concerns regarding the EPA's proposed rule to use section 111(d) of the Clean Air Act to regulate greenhouse gas (GHG) emissions for existing fossil fuel-fired power plants and its potential to impact home builders and home buyers. Chairman Whitfield has drafted legislation that will allow states to delay compliance with this proposed rule, until the courts decide on the legality of the rule, and further grants states the ability to "opt-out" of the rule if compliance will have a significant adverse effect on the state's residential, commercial or industrial rate-payers." NAHB supports this proposed legislation and urges the committee to take swift action.

Judicial Review

The EPA's proposed rule "Carbon Pollution Guidelines for Existing Power Plants: Emission Guidelines for Greenhouse Gas Emissions From Existing Stationary Sources: Electric Utility Generating Units" was intended to regulate GHG emissions from power plants. EPA's broad interpretation, however, provides additional "building blocks" to meet the emissions reductions: 1-heat rate improvement; 2-shift to natural gas power plants; 3-renewable and nuclear energy; and 4-end-use energy efficiency. There is much debate regarding whether or not the EPA has the authority to regulate beyond the "fence line" of building block 1. NAHB believes that building blocks 2-4 are not under the scope of §111(d) of the Clean Air Act. NAHB has filed written comments both as a member of a broad industry coalition and as an individual organization and has highlighted this issue. NAHB expects that the courts will have an opportunity to weigh in as well. By delaying compliance, states will not be forced to implement expensive new mandates that may be stricken at a later time.

Opt-Out and the Impact to the Home Building Industry

The opt-out provision is also a key component of this draft legislation, as the EPA's proposed rule will result in new energy efficiency requirements that will negatively impact housing affordability, without guaranteeing real emissions reductions. Beyond the difficulties of calculating and measuring compliance, new mandates do not take into account occupant behavior, the driving force behind energy use in a home, nor do they target existing buildings, which use the majority of energy in the built environment. Instead, in an attempt to comply with this rule, states will impose aggressive energy efficiency requirements on new homes that will drastically increase costs to home buyers.

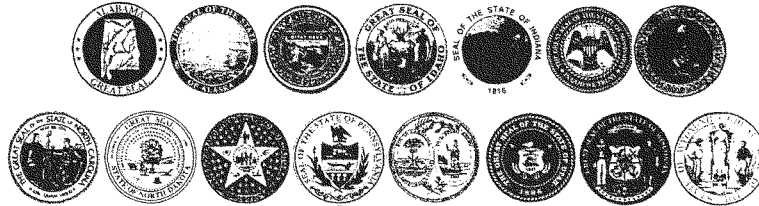
The EPA has identified new energy codes, which determine the baseline energy efficiency requirements in a building, as a tool to comply with building block 4. If this rule went into effect tomorrow, mandating one code, the 2012 International Energy Conservation Code, would cost over \$3 billion nationwide this year alone. This is only one of the possible energy efficiency mandates that could be imposed under this rule. States must have the ability to determine the impact compliance will have on their economies and act accordingly.

Conclusion

This proposed rule, if implemented, will have a negative impact on the home building industry. Many states will have no choice but to adopt new energy codes and other energy efficiency mandates. These mandates will drive up the cost of a new home. For every \$1,000 increase in the price of a new home, 206,269 home buyers are priced out of the market. New construction will continue to stagnate and home buyers will be driven to purchase existing housing stock, which uses more energy and results in higher GHG emissions.

NAHB commends Chairman Whitfield's willingness to seek a legislative solution and urges the committee to advance legislation that provides states the ability to reduce GHG emissions, without negatively impacting the economy of the state.

1149656



September 9, 2014

Honorable Barack Obama
 President of the United States
 The White House
 1600 Pennsylvania Avenue, NW
 Washington, DC 20500

Dear President Obama:

As governors of affected states, we write to express our concerns about the Environmental Protection Agency's (EPA or Agency) recent proposal for reducing carbon dioxide emissions at existing power plants. Our country needs a coherent, consistent energy policy that promotes reliable and affordable energy in addition to a healthy environment. However, we cannot achieve this end without a sincere partnership between the states and the federal government, whereby EPA appropriately recognizes the limits of federal authority. EPA's proposed rule for reducing carbon emissions, pursuant to Section 111(d) of the Clean Air Act (CAA or Act), fails to strike this necessary balance.

The unambiguous language of the CAA expressly prohibits EPA from using Section 111(d) to regulate power plants because EPA already regulates these sources under another section of the Act.¹ Moreover, even if the Agency did have legal authority to regulate power plants under 111(d), it overstepped this hypothetical authority when it acted to coerce states to adopt compliance measures that *do not reduce emissions at the entities EPA has set out to regulate*. Under federal law, EPA has the authority to regulate emissions from specific sources, but that authority does not extend outside the physical boundaries of such sources (*i.e.*, "outside the fence").² In attempting to regulate outside the fence, the Agency's proposal not only exceeds the scope of federal law, but also, in some cases, directly conflicts with established state law.³

In addition to these legal prohibitions, the rule poses numerous practical problems for state compliance. These problems reflect your Administration's decision to move forward with the proposed regulation without considering or understanding—among other crucial matters—our state energy markets and infrastructure needs.

¹ As state petitioners argued in a 2007 lawsuit concerning the Clean Air Mercury Rule ("CAMR"): "Subsection (d) of Section 111 provides authority for regulation of existing sources, but is explicitly limited to those air pollutants that are not 'emitted from a source category which is regulated under section 7412 of this title.'" See 2007 Opening Brief of CAMR State Petitioners (New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Rhode Island, Vermont, and Wisconsin).

² The proposal also fails to appreciate that state agencies enforcing air quality standards have no authority to enforce reductions outside the fence.

³ Under existing law, Kansas, Kentucky, Louisiana, Missouri, and West Virginia cannot regulate emissions from power plants by shifting pollution-control costs to other parts of the economy. Emissions reductions must occur at the power plant source.

Below, we highlight some of the more urgent and vexing compliance issues inherent in the proposal, while cautioning that this list is by no means exhaustive. We request that your Administration provides informed plans to address these significant obstacles to state compliance and that it does so well in advance of the proposal's comment deadline of October 16. If you cannot fulfill this obligation in time for states to incorporate the new information into their comments, your Administration should withdraw the proposal until it gives due consideration to these critical concerns.

1. Enforcement of State Plans

At a recent Senate hearing on the proposal, EPA Administrator McCarthy failed to answer questions pertaining to EPA's intentions to enforce provisions in State Plans that currently fall outside EPA's authority. For example, while the Administrator acknowledged that EPA lacks the authority to require a state to adopt a renewable portfolio standard (RPS), she repeatedly dodged the question of whether EPA believes it has the authority to enforce an RPS once a state submits it as part of a State Plan. Without clarification, we are left to assume that EPA is entertaining the possibility of overreaching its authority in this area.

- a. Under your proposal, if a state adopts a renewable portfolio standard (RPS) and/or an Energy Efficiency Resource Standard (EERS) as part of its compliance strategy and later softens or repeals the RPS and/or EERS, does EPA claim to have the authority to enforce the original RPS and/or EERS irrespective of subsequent legislation? If so, what is the source of EPA's legal authority to take such action?
- b. If EPA rejects a State Plan (or if a state fails to submit one), will EPA then attempt to force an RPS and/or EERS on a state via a Federal Plan, despite EPA's admission that it lacks the authority to do so? If so, how does EPA reconcile this action with having conceded to an absence of such authority?

2. Availability and Impacts of Renewable Energy

Your proposal makes broad assumptions about access to renewables. For example, EPA identifies potential renewable energy targets for individual states by looking at the scope of renewable energy mandates in an arbitrarily-defined *region* without any regard for the actual availability of renewable resources or saturation points in the *individual* states. EPA also fails to consider how increased renewable penetration will impact grid reliability and existing baseload capacity.

- a. Has the federal government conducted an analysis to determine the environmental impact of building renewable energy systems at the scale envisioned in the proposal? For example, one nuclear plant producing 1,800 MWs of electricity occupies about 1,100 acres, while wind turbines producing the same amount of electricity would require hundreds of thousands of acres. If such an analysis exists, please provide detailed information related to that analysis. If such an analysis does not exist, please explain why the analysis was not performed.
- b. Given the amount of land required by renewable energy systems, has your Administration considered that federal land permitting requirements may preclude or stall the development of renewable projects? Also, expanding the deployment of wind and solar farms could readily conflict with the Endangered Species Act (ESA). Indeed, one can easily envision the plausible scenario whereby the ESA, operating as federal law separate from the CAA, could prevent state compliance with EPA's emissions targets. How does your Administration propose to avoid these conflicts?
- c. Has the Administration mapped out a transition pathway for renewables from an artificial to a competitive market? Specifically, what is the federal plan to commercialize storage technology, which is necessary for that transition?

3. Construction and Funding for Natural Gas Infrastructure

Your proposal entails significant fuel switching from coal to natural gas, but most retiring coal plants cannot simply be replaced by natural gas plants. Before this switch can occur, gas infrastructure, including storage facilities, must

be built. The necessary pipelines require permits, and in many cases, federal approval. Before your proposal, studies indicated the need for more than \$300 billion in gas infrastructure investment between now and 2035. Currently, EPA projects that its proposal will result in nearly 50 gigawatts of retirements of baseload coal generation between 2016 and 2020, creating an even greater demand for infrastructure investment.

- a. What steps will your Administration take to ensure the necessary construction of interstate natural gas infrastructure, including pipelines? Will you consider expediting the environmental impact study (EIS) process so that gas transmission can be built to serve constrained regions?
- b. What is the estimated cost of the gas infrastructure required to meet compliance targets under your proposal, and who does the federal government foresee paying for it?

4. Disposal of Civil Nuclear Waste

Your proposal also supports nuclear power as a key part of your carbon dioxide emissions reduction strategy. Since renewables cannot replace the baseload generation attributes of retiring coal plants, maintaining existing reactors and building new units is essential for many states to reach their assigned reduction targets. However, at least nine states have bans on new nuclear builds, which will remain in effect until the federal government, at least to some degree, resolves the waste disposal issue.⁴

- a. Given your Administration's opposition to make use of the Yucca Mountain repository, will you bring forward a viable, long-term solution for disposal that would win public support and the necessary votes in Congress? And if so, when?
- b. If not, does your Administration expect the states with bans on new nuclear facilities to revise their laws, despite the federal government's failure to adequately address the waste issue?

5. Importing and Exporting Electricity

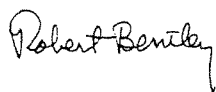
A number of states cannot meet their electricity demands without substantial imports of power. Indeed, many states host electric utilities that have existing contracts with distribution companies outside their borders. Accordingly, the shutdown of coal plants in an exporting state could also constrain power supply in an importing state. It is evident that EPA failed to consider this "offshoring" of power requirements, and the corresponding carbon footprint, when it assigned reduction targets to the states.

- a. Why would EPA unfairly penalize those states that have made adequate power generation investments, which allow them to help other states achieve secure electricity supply?
- b. Under the proposal, when exporting states must shut down coal plants, they could face serious constraints on generation resources, particularly during extreme weather. These constraints could create a difficult choice for states: allow their utilities to fulfill existing contracts with entities outside the state or service the citizens of the home state first. Has your Administration considered the potential negative impact this proposal could have on commerce within the United States? If so, please explain how you propose to address this issue.
- c. Has EPA adequately consulted with the entities charged with developing and enforcing reliability standards and with monitoring the bulk power system (e.g., Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC)) on the proposal? If so, what did FERC, NERC, and/or other such agencies and departments have to say about how the rule will impact (i) variable energy resource integration; (ii) baseload generation; and (iii) grid reliability?

The economic health of our nation depends on accomplishing a balanced energy and environment policy. The United States should be pursuing a strategy that achieves its objectives without severely harming our economies and pitting states against one another. To help facilitate a successful energy policy, we bring these important state concerns to your attention and request thoughtful answers to our questions. Thank you in advance for your cooperation, and we look forward to your response.

⁴ California, Connecticut, Illinois, Kentucky, Maine, New Jersey, Oregon, West Virginia, and Wisconsin.

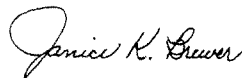
Sincerely,



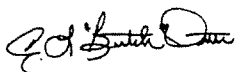
Governor Robert J. Bentley
Alabama



Governor Sean Parnell
Alaska



Governor Janice K. Brewer
Arizona



Governor C.L. "Butch" Otter
Idaho



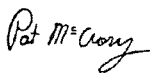
Governor Mike Pence
Indiana



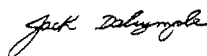
Governor Phil Bryant
Mississippi



Governor Susana Martinez
New Mexico



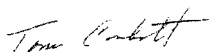
Governor Pat McCrory
North Carolina



Governor Jack Dalrymple
North Dakota



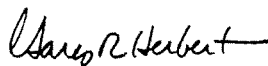
Governor Mary Fallin
Oklahoma



Governor Tom Corbett
Pennsylvania



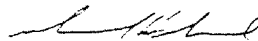
Governor Nikki Haley
South Carolina



Governor Gary R. Herbert
Utah



Governor Scott Walker
Wisconsin



Governor Matthew H. Mead
Wyoming

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

April 20, 2015

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Bobby Rush
Ranking Member
Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Whitfield and Ranking Member Rush:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, strongly supports the "Ratepayer Protection Act of 2015." This draft legislation would preserve states' longstanding responsibility for electricity system oversight and protect American households and businesses from the economic and electricity reliability threats posed by power plant carbon regulations proposed by the Environmental Protection Agency (EPA).

Proposed under executive direction from President Obama and expected to be finalized this summer, EPA's "Clean Power Plan" would dramatically transform the generation, transmission, distribution, and use of electricity across America. States, which would be responsible for implementing EPA's far-reaching regulation, have detailed widespread shortcomings with EPA's proposal.

A recent review of official state comments on EPA's rule prepared by the Chamber quantified the extent and magnitude of these objections. The review found that 32 states raised fundamental concerns with the legal foundations of the rule, 28 raised significant concerns regarding compliance costs and economic impacts, 32 warned of electricity reliability problems, and 34 objected to EPA's rushed regulatory timelines.

Consistent with these concerns, many states have noted that the development of state implementation plans for such a complex and expansive regulation will require a massive and costly undertaking. Accordingly, and given the myriad legal and practical concerns that must be resolved in order to allow for effective planning, states should not be required to expend limited resources on implementation until judicial review is complete. The "Ratepayer Protection Act of 2015" would allow states to preserve their resources and ensure that compliance planning efforts by states and stakeholders alike would not be exhausted on a regulation that may ultimately be found unlawful.

Equally important, the “Ratepayer Protection Act of 2015” would ensure governors are empowered to protect their states from the potentially significant economic and electricity reliability impacts of EPA’s rulemaking. This important provision would maintain states’ authority to regulate electricity within their own borders, consistent with foundational principles of the Federal Power Act and the Clean Air Act’s framework of cooperative federalism.

For these reasons, and in order to protect the countless benefits that affordable and abundant domestic energy resources provide to our economic development and security, the Chamber strongly supports the “Ratepayer Protection Act of 2015.” We applaud the Subcommittee for its leadership on this important issue, and look forward to working with you as it advances through Congress.

Sincerely,

A black rectangular redaction box covering the signature of R. Bruce Josten.

R. Bruce Josten

cc: Members of the Committee on Energy and Commerce



**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

CARLOS LOPEZ-CANTERA
LT. GOVERNOR

CLIFFORD D. WILSON III
INTERIM SECRETARY

December 1, 2014

Via Electronic Submission to A-and-R-Docket@epa.gov
Attn: Docket No. EPA-HQ-OAR-2013-0602

The Honorable Gina McCarthy
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: Proposed Clean Power Plan: 79 Fed. Reg. 34830 (June 18, 2014); 79 Fed. Reg. 64543 (Oct. 30, 2014); and 79 Fed. Reg. 67406 (Nov. 13, 2014)

Dear Administrator McCarthy:

The Florida Department of Environmental Protection ("Department") offers the following on the U.S. Environmental Protection Agency's (EPA) proposed *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*.

EPA's stated goals for the proposed rule include: more efficient power production; reduced consumer electric bills; and a competitive, growing economy. As Florida's lead environmental agency and primarily responsible for implementing clean air requirements, we share these goals. Although it was not credited in the proposed rule, Florida's power plants already have reduced their carbon intensity rate by 21% since 2005, and 11% since 2010, resulting in one of the lowest rates in the United States. Today, every megawatt-hour of electricity produced in the state generates, on average, 330 pounds less CO₂ than in 2005. These same plants have reduced nitrogen oxides and sulfur dioxide emissions—key to the formation of fine particle and ozone pollution—by over 75% since 2005, including 37% since 2010. In fact, air emissions from industrial facilities generally are declining. Emissions hit their lowest levels since the Department began tracking them in 1985, declining by 22% since 2010. These reductions largely were driven by ratepayer-funded investments of nearly 20 billion dollars in new, very efficient power plants, and air pollution control equipment required by Department-issued permits.

As a result, Florida has been widely recognized for its air quality. The American Lung Association recently reported that Florida had zero unhealthy days for ozone pollution in the last three years, and 23 Florida cities made its "cleanest cities" list. Moreover, according to EPA's own performance standards, the Department's air compliance and enforcement program ranks first among southeastern states and second nationwide. This

The Honorable Gina McCarthy
 December 1, 2014
 Page 2

year, the Department trained 200 compliance inspectors statewide that ensures this progress continues. These successes reflect the Department's continued commitment to clean air.

EPA's proposed rule has the potential for broad ranging effects on Florida's energy generation and transmission system, a system that has traditionally been an area regulated by the states and the type of expansion the Supreme Court has cautioned against.^{1 2 3}

The proposed rule places a higher burden on some states to achieve the required reductions vis a vis other states. Florida's "state goal" under the proposed rule is one of the most demanding in the country while other states that have done relatively little in the way of reducing greenhouse gas emissions have far less demanding "state goals."⁴ Oddly,

¹ See U.S. Const. amend. X (reserving powers to the states or the people that are "not delegated to the United States by the Constitution, nor prohibited by it to the states..."); see also 16 U.S.C. § 824(b)(1) (limiting the jurisdiction of Federal Power Act to the transmission of electric energy in interstate commerce, and not applying to facilities engaged in intrastate commerce); 42 U.S.C. § 7113 (requiring the Department of Energy, including the Federal Regulatory Commission, to work with states when conflicts arise between its proposed agency actions with the energy plan of any state).

² See *Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427, 2444 (2014) (Finding EPA interpretations of the Clean Air Act unreasonable if there is an "enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization").

³ If the Department properly interprets the proposed rule, it seems to treat an entire state as the "source," as opposed to individual facilities, as is contemplated by the definitions and structure of Section 111. See CAA § 111(a)(3) & (6), 42 U.S.C. § 7411(a)(3) & (6); 40 C.F.R. 60.20 - 60.29. The proposed rule does not sufficiently identify the statutory basis for EPA's determination and application of "best system of emission reductions" (BSER), especially the inclusion of beyond-the-unit measures. EPA's use of beyond-the-unit measurements appears to be outside the scope of Section 111(d). For example, the rule would regulate renewable energy sources and energy efficiency although neither are a source category nor meet the definition of "stationary source" because they do not emit any air pollutant. Accordingly, EPA should address these questions regarding the use of beyond-the-unit measures.

⁴ Furthermore, the Department has identified other legal issues raised by the Clean Power Plan that EPA should consider. Specifically, the regulation of existing sources through the Clean Power Plan seems to be premature. See CAA § 111(d)(1)(A), 42 U.S.C. § 7411(d)(1)(A). Section 111(d)(1)(A)(ii) requires EPA to first finalize standards of performance for new sources before developing procedures for the submission of state plans for existing sources. *Id.* Moreover, EPA has not yet made an endangerment finding as required by Section 111(b)(1)(A) to support the proposed Clean Power Plan. See CAA § 111(b)(1)(A); 42 U.S.C. § 7411(b)(1)(A). Lastly, Section 111(d) prohibits EPA from utilizing Section 111(d) where the existing stationary source is regulated under Section 112, related to Hazardous Air Pollutants. See CAA § 111(d)(1); 42 U.S.C. § 7411(d)(1); see also *American Electric Power v. Connecticut*, 131 S.Ct. 2,527, 2,537 n.7 (2011) (stating that "[t]here is an exception: EPA may not employ §7411(d) [111(d)] if existing stationary sources of the pollutant in question are regulated under the national ambient air quality standards program, §§ 7408-7410, or the 'hazardous air pollutants' program, § 7412"). EGUs are already subject to regulation under

The Honorable Gina McCarthy
 December 1, 2014
 Page 3

the proposed rule punishes instead of rewards states such as Florida, that have proactively moved energy production, prior to this proposed rule, to energy sources that generate less greenhouse gas emissions, such as Natural Gas Combined Cycle (“NGCC”) facilities, that EPA now promotes. For these reasons, EPA’s inequitable treatment of Floridians in its creation of varying burdens for different states seems arbitrary.⁵

As Florida has worked to become a national leader in air quality, we have simultaneously remained committed to ensuring Florida’s families have an affordable and secure source of energy. A key factor in maintaining affordable utility prices is ensuring new rules and regulations have been fully discussed and vetted before asking families to pay for new requirements. To that end, it appears virtually certain that this rule will be contested in the courts once it is finalized. As with EPA’s relatively recent Clean Air Interstate Rule (CAIR) and the Cross-State Air Pollution Rule (CSAPR) challenges, there will be significant uncertainty for states and potentially a huge state investment being put at risk. Given these concerns, EPA should consider voluntarily suspending the aggressive implementation deadlines pending the outcome of the challenges to avoid the incredible inefficiencies that could result if the rule is not upheld.

The Department appreciates the opportunity to comment on the rule and reiterates its commitment to clean air, efficient power production, reduced consumer electric bills, and a competitive, growing economy. Administrator McCarthy has stated that EPA intended to meet these goals through an “absolute collaboration between the federal and state government.”⁶ The Department respectfully requests that EPA give due consideration to strengthening those commitments by continuing to evaluate the cost and benefits of the proposed rule to ensure that the carbon emissions reductions accomplished through this proposal are achieved through the most efficient, transparent, and legally sound means.

Section 112, therefore cannot now be subject to regulation under Section 111(d). See 77 Fed. Reg. 9,304 (Feb. 16, 2012).

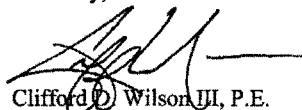
⁵ See County of Los Angeles v. Shalala, 192 F.3d 1005, 1022 (D.C. Cir. 1999) (“[A]n agency action is arbitrary when the agency offer[s] insufficient reasons for treating similar situations differently.” (quoting Transactive Corp. v. U.S., 91 F.3d 232, 237 (D.C. Cir. 1996)).

⁶ McCarthy, Gina. “State, Regional and Company Approaches to Reduce Power Sector GHG Emissions.” Bipartisan Policy Center. Grand Hyatt Washington Constitution Ballroom, Washington D.C. April 7, 2014 available at: https://archive.org/details/CSPAN2_20140415_203000_Key_Capitol_Hill_Hearings#start/6420/end/6480.

The Honorable Gina McCarthy
December 1, 2014
Page 4

The Department also provides the following attached technical comments in the form of data corrections and clarifications. If you have any questions, please contact Paula Cobb, Director of Air Resource Management, at (850) 717-9000 or Paula.Cobb@dep.state.fl.us.

Sincerely,



Clifford D. Wilson III, P.E.
Interim Secretary

**Florida Department of Environmental Protection
Data Corrections and Clarifications**

A. Unit Characterization

1. EPA's eGRID dataset classifies FPL's Cape Canaveral NGCC plant in the existing NGCC category. EPA's Goal Computation TSD states, however, that "NGCC capacity that was not operating in 2012" should be classified as "under construction NGCC."⁷ EPA's eGRID data for the Cape Canaveral NGCC shows that this unit did not send any power to the grid in 2012; therefore, this unit should be categorized as an "under construction NGCC" unit for goal setting purposes. When a NGCC unit is listed as an "under construction NGCC" unit, EPA's goal setting methodology states that the NEEDS database is used to determine that unit's capacity.⁸ Florida's existing NGCC capacity should be reduced by 1,295 MW (nameplate capacity of Cape Canaveral) and Florida's under construction NGCC capacity should be increased by the capacity of Cape Canaveral according to the NEEDS database.
2. The NEEDS database does not identify specific "Under Construction NGCC" units in Florida. However, the Department believes that the listed 1,157 MW of "Under Construction NGCC" capacity represents the summer capacity of FPL's Riviera NGCC facility. If this is the case, it appears EPA has not included the under construction capacity from FPL's Port Everglades NGCC. The Department believes this unit commenced construction prior to January 8, 2014 and therefore should be classified as an "Under Construction NGCC." If this is accurate, Florida's "Under Construction NGCC" capacity should be increased by the capacity of Port Everglades according to the NEEDS database.
3. The City of Tallahassee's Arvah B. Hopkins Unit 2 is characterized in the 2012 eGRID database as having a nameplate capacity of 259.2 MW. This unit's true capacity is, however, significantly lower. Unit 2 was originally a 230 MW (summer net rating) gas/oil steam EGU. The steam unit was repowered for use as a heat recovery boiler and as a result of the reduced heat input, now has a summer net rating of 140 MW. The facility is physically unable to generate 259.2 MW; therefore, its potential generation capacity should be identified as 140 MW.

B. Baseline Considerations

4. Has EPA considered whether its use of nuclear uprates completed in 2012 or post-2012 in calculating the at-risk nuclear generation goal is consistent with its use of a 2012 baseline? Would EPA consider using a different baseline date that allows recently completed nuclear uprates to be excluded from the goal-setting calculation but be included in the compliance calculation?

⁷ Goal Computation TSD, p. 6.

⁸ Goal Computation TSD, p. 6.

C. Mass-Based Considerations

5. EPA performed modeling using the Integrated Planning Model to project future generation and CO₂ emissions for the compliance period. EPA has provided unit-specific data for both a “business-as-usual” scenario and a “Clean Power Plan” scenario for the years 2020 and 2025 (i.e., unit-specific “parsed files” that reflect both existing and projected new units).⁹ EPA has not, however, provided a “parsed file” for any other years. Has EPA considered whether the parsed files for each year of the compliance period (i.e. 2020-2029) would be helpful or necessary to determine CO₂ emissions from 111(d) affected units during the compliance period, and whether states could use these files as a proxy to determine a mass-based goal comparable to the rate-based goal set by EPA?

D. Affected Units

6. EPA’s proposed applicability criteria exclude new units and “those subject to subpart TTTT as a result of commencing modification or reconstruction prior to becoming subject to an applicable state plan.” If an EGU that is currently “affected” under 111(d) were to commence modification or reconstruction prior to becoming subject to an applicable state plan, would EPA recalculate the state-specific goal to reflect the absence of this no-longer “affected” EGU?
7. EPA has delineated units that are classified as “affected EGUs.”¹⁰ There are a number of existing electrical generators in Florida that are not “affected EGUs.” Many of these units are not subject to 111(d) because of the type of fuel combusted (i.e., biomass, waste-to-energy, and landfill gas), but these units do sell power to the grid. Will EPA provide clarification as to whether states have the discretion to determine whether to include CO₂ emissions from these facilities in calculating the state rate for compliance purposes?
8. In the GHG Abatement Measures TSD, EPA states that Florida’s renewable energy generation for 2012 was 4,523,798 MWh.¹¹ After reviewing the U.S. EIA Detailed 1990-2012 Annual Generation State Historical Tables, which are included as appendices to the proposal, it appears that EPA arrived at Florida’s 2012 renewable energy generation total by adding the megawatt hours produced by “Other Biomass,” “Solar Thermal and Photovoltaic,” and “Wood and Wood

⁹ EPA’s “Parsed File: Base Case, 2020,” “Parsed File: Base Case, 2025,” “Parsed File: Option 1 State 2020,” “Parsed File: Option 1 State 2025,” are available at:

<http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OAR-2013-0602>

¹⁰ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule, 79 FR 34830, 34954 (June 18, 2014) (specifying in proposed 40 CFR 60.5800 that EGUs “subject to subpart TTTT as a result of commencing construction or reconstruction after the subpart TTTT applicability date” are exempt from state plans).

¹¹ *GHG Abatement Measures TSD*, pp. 4-6

Derived Fuels.”¹² EPA has stated that it will finalize the CO₂ accounting framework for biogenic CO₂ emissions at a later date.¹³ Has EPA considered the effects of the accounting framework on the calculation of state goals and compliance demonstrations? Will EPA revisit the calculation of state goals if it determines that biomass cannot be treated as a zero carbon source?

9. EPA has not included generation from waste-to-energy facilities in Florida when calculating the 2012 renewable energy generation totals. Do states have flexibility to include waste-to-energy facilities in calculating generation from renewable energy sources for compliance purposes?
10. EPA appears to include among affected EGUs units that co-fire landfill gas together with fossil fuels. Has EPA considered whether states could credit the landfill gas component as “carbon neutral” for purposes of determining compliance with state goals?
11. The definition of “affected EGUs” excludes most simple cycle combustion turbines (SCCT) due to the limited amount of time that they operate.¹⁴ Has EPA considered whether a non-affected unit could become an affected unit (i.e., by operating above the 33% capacity factor making it subject to the 111(d) plan applicability criteria)? In the event that such a unit were re-designated as affected, would EPA recalculate the state-specific goal?

D. “Building Block 2” Considerations

12. Much of Florida has a climate that is humid sub-tropical or tropical. EPA determined the BSER for re-dispatch by ascertaining the top 10% of highest utilized NGCC facilities, which resulted in the setting of the BSER at 70% of nameplate capacity. Has EPA considered whether summer capacity better reflects the actual generating capacity of affected facilities, and whether a determination of the 90th percentile of NGCC capacity factors should be based upon net summer capacity?
13. For existing NGCC facilities, EPA uses “nameplate capacity” to determine the potential electricity generation capacity factors.¹⁵ For under construction NGCC facilities, however, EPA uses data from the NEEDS database, which the Department believes uses expected summer capacity.¹⁶ In determining the BSER,

¹² U.S. EIA Detailed 1990-2012 Annual Generation State Historical Tables (specifying that in 2012, Florida generated 2,272,621 MWh from “Other Biomass,” 193,616 MWh from “Solar Thermal and Photovoltaic,” and 2,057,561 MWh from “Wood and Wood Derived Fuels”).

¹³ See 79 FR 34927.

¹⁴ 79 FR 34954 (specifying in proposed 40 CFR 60.5795(2) that stationary combustion turbines that have base load ratings “greater than 73 MW (250 MMBtu/h), was constructed for the purpose of supplying, and supplies, one-third or more of its potential electric output and more than 219,000 MWh net-electrical output to a utility distribution system on a 3-year rolling average basis,” are not affected EGUs).

¹⁵ *GHG Abatement Measures TSD*, pp. 3-6

¹⁶ *Goal Computation TSD*, p. 6.

has EPA considered the effect of using expected summer capacity to select the capacity of under construction NGCC units while using nameplate capacity for existing units?

14. In order to determine the 70% dispatch threshold for NGCC facilities, EPA compared 2012 NGCC facility generation to nameplate capacity and calculated capacity factors for each NGCC facility. Using this data, EPA determined that the top 10% of highest utilized NGCC plants operated at an annual capacity factor (in terms of nameplate capacity) at or above 70%.¹⁷ In order to validate the feasibility of a 70% NGCC capacity in a compliance scenario, EPA used the Integrated Planning Model, which uses the NEEDS database as its primary input for information on generating units.¹⁸ Has EPA considered the fact that the NEEDS database does not rely on “nameplate capacity” as its principle data input, but rather summer capacity?¹⁹
15. Has EPA considered that discrepancies may exist between nameplate and summer capacities as a result of repurposed equipment? For example, Florida has identified at least one heat recovery unit that was repurposed, and, as a result, now operates well below its nameplate capacity because of insufficient waste heat from the combustion turbine (see number 3 above). Has EPA considered whether use of the NEEDS database or summer capacity might eliminate such discrepancies?²⁰
16. EPA’s IPM modeling accounts for transmission limitations between NERC regions. This modeling assumes, however, that transmission capability within each NERC region is unrestrained (i.e., there are no technological or logistical barriers preventing the movement of electricity within the region). Given Florida’s unique peninsular geography, has EPA considered whether this assumption unrealistically assumes that Florida’s transmission capabilities are adequate to meet the modeled assumptions of 70% dispatch?
17. EPA used the Integrated Planning Model to estimate costs associated with the Clean Power Plan. Has EPA considered the extent to which the model incorporates data that account for the expenses associated with decommissioning units prior to the recovery of their capital costs?
18. As EPA stated in its Notice of Data Availability, stakeholders have expressed that states with large amounts of excess NGCC capacity are required to make significant CO₂ reductions early in the compliance period in order to meet their interim goals, defeating the intended purpose of providing states flexibility. Given that the interim goals reduce states’ (with high NGCC capacity) options for

¹⁷ *GHG Abatement Measures TSD*, pp. 3-5 – 3-9

¹⁸ *GHG Abatement Measures TSD*, pp. 3-20 – 3-25

¹⁹ *NEEDS User’s Guide*, p. 4-4.

²⁰ 2012 summer capacity can be found in EIA form 860, available at: <http://www.eia.gov/electricity/data/eia860/>.

meeting compliance, has EPA considered altering or removing the interim goals or phasing in Building Block 2 in order to provide states with implementation flexibility?

E. “Building Block 3” Considerations

19. States in the southeastern region were given a renewable energy target of 10% of statewide electrical generation.²¹ This regional approach was based on the assumption that the potential to expand renewable energy resources varied by region.²² The figure for the southeastern region is based upon the average of all renewable portfolio standards of all states in that region. For the southeastern region, however, North Carolina is the only state to have such a standard. As such, North Carolina became the standard for the region. It is, however, a combined renewable energy/efficiency standard that allows utilities to meet a portion of their targets through efficiency measures, rather than the deployment of new renewable energy generation.²³ Has EPA considered the effect of this on its Building Block 3 calculations?
20. EPA has proposed an alternative methodology to determine regional renewable energy potential based upon a technical and economic analysis of a given region and apportion the targets between each state in a given region. It would appear this option better aligns with EPA’s focus on best available data.
21. EPA questioned whether it is appropriate to have incremental energy efficiency and renewable energy displace fossil-fuel generation in a manner similar to Building Block 2. As EPA observed in its Notice of Data Availability, states with large NGCC capacity and lower NGCC utilization must reduce the use of coal, oil, and gas steam EGUs to a significantly greater extent than states with lower NGCC capacity and/or higher NGCC utilization. It appears this approach would further exacerbate issues that stakeholders have raised concerning stranded assets, remaining useful life, and grid reliability.

²¹ 79 FR 34866.

²² *Id.*

²³ See North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (REPS) at <http://www.ncga.state.nc.us/Sessions/2007/Bills/Senate/PDF/S3v6.pdf>



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December 1, 2014

Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mail Code 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2013-0602

On behalf of the over 1 million members of the National Association of REALTORS® (NAR), I appreciate the opportunity to submit these comments on the Environmental Protection Agency's (EPA) proposed rule, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units," published at 79 Federal Register 34,830 (June 18, 2014), to reduce carbon dioxide emissions from existing fossil-fueled power generating facilities.

NAR is concerned that the proposed Clean Power Plan will have long-term, negative economic impacts on homeowners, businesses, and communities and will result in minimal carbon reductions.

Under the proposed rule, EPA would require states to meet CO₂ emission targets starting in 2020 on a state-by-state basis. States can use a number of reduction measures ("building blocks") to meet those goals, including:

- Increasing the efficiency of existing power plants;
- Switching from coal-fired power plants to natural gas plants;
- Increasing renewable energy sources, such as nuclear, wind or solar; and
- Reducing the demand for energy through enhanced energy efficiency.

EPA estimates that the Proposed Rule will result in emission reductions of 30 percent from 2005 levels by the year 2030, and believes these state-specific goals will provide states with flexibility to adapt their CO₂ reduction program.

NAR Concerns Related to The Proposed Clean Power Plan

EPA is attempting to impose a new regulatory framework that will transform how electricity is generated, distributed, transmitted, and used. This rule threatens to eliminate the critical competitive advantage that affordable and reliable electricity provides to American homeowners, businesses and the economy.

EPA estimates that this power plant rule will cause nationwide electricity price increases of between 6 and 7 percent in 2020, and up to 12 percent in some locations. EPA projects annual compliance costs between \$5.4 and \$7.4 billion in 2020, rising up to \$8.8 billion in 2030. These costs don't factor in the economy wide impacts of more expensive electricity. Adding insult to injury, impacted businesses will choose to move overseas, taking their emissions and their jobs with them. America will have fewer jobs, but global emissions won't decrease.



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Higher energy prices disproportionately harm low-income and middle-income families. Since 2001, energy costs for middle-income and lower-income families have increased by 27 percent, while their incomes have declined by 22 percent. If families are spending more on electricity, this leaves less for them to spend on the purchase of a home and makes the cost of operating a home more expensive. If this rule is finalized, we can expect fewer families to realize the American dream of homeownership. Some homeowners could be forced to walk away from their existing homes due to rising energy costs.

Commercial buildings will also be impacted by increased utility costs. Building owners will have a harder time attracting tenants, or existing tenants will be priced out of their leases. Leases could include energy-related concessions that are costly to building owners. In many retail and service settings, the increased costs will be passed on to the consumer.

Half-empty office buildings, depressed retail environments and increased consumer costs paint a bleak picture for the outcome of the proposed increased utility costs. Blighted properties reduce property values. Empty storefronts and offices depress local and regional economies.

In both residential and commercial properties, utility costs play a significant role in the decision-making process of a prospective tenant or purchaser. The Great Recession demonstrated the importance of the real estate sector as a critical engine of the economy. Such a significant increase in utility costs will hinder the pace of real estate transactions and will slow down the economy overall. It is not prudent to implement such drastic and costly rules at this time.

EPA's carbon rules will increase reliability risks and the potential for brownouts and blackouts at times Americans rely on electricity the most. EPA should not move forward with this regulation until comprehensive and independent reliability analysis is undertaken by expert organizations such as the Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC).

No matter what regulatory approach EPA takes for power plants, its impact on global greenhouse gas emissions will be minimal. EPA's regulations will impose billions in costs on the U.S. economy but fail to reduce carbon emissions on a global scale. If EPA's proposed mandate is met, projected global emissions would be reduced by a mere 1.3 percent in 2030. Upon full implementation in 2030, the carbon reduced from this massive and costly regime would offset the equivalent of just 13.5 days of emissions from China. In terms of achieving its stated goal of reducing greenhouse gas emissions, this rule will be ineffective.

Despite the magnitude and incredible complexity of EPA's proposal, and despite requests for significantly longer time to develop public comments, the agency plans to finalize and implement the rules on a rushed and arbitrary timeline.

Therefore, NAR requests that EPA withdraw this ill-conceived proposed rule, hold additional public hearings and collect more data to develop an approach for energy development, conservation and pollution prevention that benefits the environment without negatively impacting homeowners and the still-recovering economy. EPA needs to go back to the drawing board with this proposal.

Sincerely,



Chris Polychron
2015 President, National Association of REALTORS®



This is a Comment on the **Environmental Protection Agency** (EPA) Proposed Rule: **Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units**

For related information, [Open Docket Folder](#)

Comment Period Closed

Dec 1 2014, at 11:59 PM ET

ID: EPA-HQ-OAR-2013-0602-27555

Tracking Number: 1jy-8ft4-xn49

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Dec 20, 2014

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2060-AR33

Show More Details

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Room 1101A
Washington, DC 20460

Docket ID No. EPA-HQ-OAR-2013-0602

Dear Administrator McCarthy,

I am writing on behalf of the National Black Chamber of Commerce to request that the Environmental Protection Agency withdraw its proposed plan, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units. EPA's proposed regulations will result in substantial negative effects that threaten affordable electricity costs for all Americans, and especially African-American consumers and businesses.

EPA's proposal to regulate carbon from existing power plants is one of the most complex regulations ever put forth. It also appears to be one of the costliest. Higher energy costs resulting from your proposal will devastate small businesses, for which energy costs are often the highest, or one of the highest, operating expenses. Thousands of jobs by definition will be eliminated by your proposed rule, but the same does not exist in the promise of creating new jobs.

The African-American community continues to enjoy impressive growth in the small business arena. African-American businesses were being created at a steady rate prior to the economic crash in 2008. We have worked to get back to that level of growth, driven by both the desire to both

contribute to our own communities and to help rebuild the broader U.S. economy, but not without sacrifices or toil. More than ever before, African-American business owners are a part of the vital resurgence our nations economy needs. That is why the EPA and the Obama Administration must recognize that these policies will cause a domino effect that could ultimately force African-American business owners to eliminate good-paying jobs and become more financially unstable as energy costs rise.

Higher energy costs will also be felt by lower- and middle-income households, particularly within the African-American community. It is inexcusable to gamble with the livelihoods of anyone; let alone the small business community, whom provide jobs that allow families to traverse economic divides, , by pushing forward with regulations that jeopardize access to affordable and reliable energy. EPA's rules should encourage lower- and middle-income Americans to grow and flourish; not hinder their chances for success.

For these reasons, the NBCC urges EPA to retract its proposed carbon emissions standards for existing power plants.

Thank you,

Harry Alford
President and CEO
National Black Chamber of Commerce

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Greg Winegardner

December 1, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Room 1101A
Washington, DC 20460

Docket ID No. EPA-HQ-OAR-2013-0602

Dear Administrator McCarthy,

The United States Hispanic Chamber of Commerce (USHCC) values policies that protect the economic interests of those we serve. As you may know, the Hispanic business community has proven to be an incredible asset to American economic growth. Yet, implementation of the Clean Power Plan could hinder Hispanic business growth, by threatening to raise power costs for consumers and hinder the ability of businesses to hire and grow. That is why we strongly urge the EPA to consider making significant changes to the proposed standards on greenhouse gas emissions for existing power plants.

More than 3.2 million Hispanic-owned businesses in the United States contribute roughly \$486 billion to our nation's economy every year. The growth of Hispanic businesses has exploded, up nearly 40 percent since 2007. This growth is not limited to certain geographic areas of the country but has occurred in nearly every corner of the United States and in every sector.

Many factors have bolstered this growth, but chief among them has been access to low-cost electricity. Businesses of all sizes—from energy-intensive manufacturers to small family-owned stores—require power to keep their operations moving. Therefore, it is critical that the regulations coming out of Washington protect small business owners, in all communities, from increased electricity costs. If monthly energy bills get too high, business owners are forced to trim their spending in other areas, which too often includes payroll.

Rising electricity prices are not the only risks facing small businesses should EPA's proposed regulations go into effect. Businesses depend on readily-available access to power to ensure operations run efficiently. But under EPA's plan, many states are questioning the reliability of the electric grid should they be forced to choose from a narrowing set of fuel sources in an expedited timeframe. If the U.S. power grid is stretched to capacity, businesses could be left vulnerable to power outages that harm their bottom line and our economy as a whole.

The USHCC believes in the need to preserve our environment for future generations to enjoy. That is a noble goal that we all support. At the same time, we also support regulations that will allow America to continue building a stronger economy. Innovation in fossil fuel technologies such as coal and natural gas, should be at the forefront of any plan to improve our environment. Therefore, we urge EPA to re-examine the impacts and implementation of its Clean Power Plan proposal, which we believe is currently too inflexible, costly and contains many unknown impacts.

Thank you for your consideration,

Javier Palomarez
President & CEO
USHCC

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
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Majority (202) 225-2927
Minority (202) 225-3641

May 4, 2015

The Honorable Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Assistant Administrator McCabe:

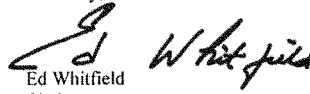
Thank you for appearing before the Subcommittee on Energy and Power on April 14, 2015, to testify at the hearing entitled "EPA's Proposed 111(d) Rule for Existing Power Plants, and H.R. ___, Ratepayer Protection Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, May 18, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittees.

Sincerely,


Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 09 2015

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Whitfield:

Thank you for your letter of May 4, 2015, to Acting Assistant Administrator Janet McCabe requesting responses to Questions for the Record following the April 14, 2015, hearing before the Subcommittee on Energy and Power entitled, "EPA's Proposed 111(d) Rule for Existing Power Plants, and H.R., Ratepayer Protection Act."

The responses to the questions are provided as an enclosure to this letter. If you have any further questions please contact me, or your staff may contact Kevin Bailey at bailey.kevinj@epa.gov or (202) 564 2998.

Sincerely,

A handwritten signature in black ink, reading "Nichole Distefano".

Nichole Distefano
Deputy Associate Administrator
for Congressional Affairs

Questions for the Record
House Energy and Commerce, Subcommittee on Energy and Power
Hearing Titled: EPA's Proposed 111(d) Rule for Existing Power Plants, and
H.R. __, Ratepayer Protection Act

Janet McCabe, Acting Assistant Administrator

The Honorable Ed Whitfield

1. In the proposed Clean Power Plan, EPA states that "We estimate a 4 to 7 percent increase in retail electricity rates, on average, across the contiguous U.S. in 2020."
 - a. What is the low end of the range and the high end of the range?
 - b. Has EPA prepared estimates of the average retail electricity price increases for the years 2021 through 2030? If yes, please provide those estimates for each year, including the high and low ends of the range.
- A. **Consistent with statute, Executive Order, and OMB guidance, the EPA conducted a Regulatory Impact Analysis that shows the benefits and costs of illustrative scenarios states may choose in complying with the proposed Clean Power Plan. Because states have flexibility in how to meet their goals, the actions taken to meet the goals may vary from what is modeled in the illustrative scenarios. Specific details, including information about how costs and benefits are estimated are available in section 3.7.9 of the Regulatory Impact Analysis (RIA) (<http://www2.epa.gov/sites/production/files/2014-06/documents/20140602ria-clean-power-plan.pdf>).**
2. EPA announced that it would begin in January 2015 a rule making process to propose by this summer a model federal plan for the Clean Power Plan.
 - a. Does EPA have authority under section 111(d) of the Clean Air Act to issue a mandatory federal plan that orders a state to dispatch low-carbon electricity?
 - b. Does EPA have authority under section 111(d) to issue mandatory federal plan that orders a state to generate electricity from renewable sources?
 - c. Does EPA have the authority under section 111(d) to issue a mandatory federal plan that orders a state to enact consumer energy efficiency standards?
 - d. Does EPA have the authority under section 111(d) to issue a mandatory federal plan that requires a nuclear power plant at risk for closing to remain open?
 - e. Does EPA believe it has legal authority under section 111(d) to impose requirements in a mandatory federal plan on entities other than operators of affected electric generating units?

- A. The Clean Air Act provides for EPA to write a federal plan if a state does not put an approvable state plan in place. In response to requests from states and stakeholders since the proposed Clean Power Plan was issued, EPA announced in January 2015 that we will be starting the regulatory process to develop a rule that would set forth a proposed federal plan and could provide an example for states as they develop their own plans. EPA fully expects that, as contemplated by the Clean Air Act, states will want to submit their own plans, and will use that as an opportunity to tailor their plans to their specific needs and priorities. The agency expects to issue the proposed federal plan for public review and comment in summer 2015.**
3. In the "Clean Power Plan" EPA is encouraging States to consider establishing or participating in cap and trade programs. For the federal plan, is EPA considering requiring regions or states to establish or pursue a cap and trade approach?
- A. The Clean Air Act provides for EPA to write a federal plan if a state does not put an approvable state plan in place. In response to requests from states and stakeholders since the proposed Clean Power Plan was issued, EPA announced in January 2015 that we will be starting the regulatory process to develop a rule that would set forth a proposed federal plan and could provide an example for states as they develop their own plans. EPA fully expects that, as contemplated by the Clean Air Act, states will want to submit their own plans, and will use that as an opportunity to tailor their plans to their specific needs and priorities. The agency expects to issue the proposed federal plan for public review and comment in summer 2015.**
4. In its 111 (d) proposed rule for existing power plants, EPA proposes to allow States to comply by developing and submitting a multi-state plan signed by authorized officials for each of the participating states. EPA also indicates plans must include enforceable measures to reduce CO₂ emissions, and that once approved by the agency a plan would be federally enforceable. Section 102(c) of the Clean Air Act (42 USC 7402) provides that one or more States may negotiate and enter into agreements or compacts for the prevention and control of air pollution, but that no such agreement or compact shall be binding or obligatory upon any State a part thereto unless and until it has been approved by Congress.
- a. Would Section 102(c) of the Clean Air Act apply to a multi-state plan being submitted to comply with EPA's 111 (d) rule?
- b. Would a multi-state plan agreed to by participating States be binding or obligatory upon any State a part thereto before it had been approved by Congress?
- A. In the proposal, the EPA invited comment on how multistate plans might work (79 Fed. Reg. 34911 – 34912). We are currently reviewing comments received on that issue, as well as all of the more than 4.3 million comments received on the proposal, as we work towards the development of a final Clean Power Plan.**

5. The EPA FY2016 Budget requests funding for: "Implementation of the Clean Power Plan through development of guidance and tools that states will need to create their plans for addressing carbon pollution from existing power plants. In particular, program expertise will be needed to model economic potential and evaluate costs and benefits of end-use energy efficiency and renewable energy measures to support state plan development."
 - a. What is the "guidance and tools" needed to create State plans?
 - b. Will it be available at the time EPA releases the final rule?
 - c. If not, when will it be available?

A. As with any major rule the EPA will be working with states to help them throughout the implementation process. To further assist states we will be providing them with resources and tools throughout the implementation phase of this rulemaking. For some of the tools and resources EPA has already provided see: <http://www2.epa.gov/cleanpowerplanttoolbox>.
6. When you testified in June 2014, you indicated that EPA and FERC staff had had communications relating to the proposed Clean Power Plan.
 - a. Have the documents reflecting those communications been included in the rulemaking docket?
 - b. Will all documents reflecting communications between EPA and FERC staff relating to the proposed rule be included in the docket for the final rule?

A. The EPA will ensure that the final Clean Power Plan complies with the law, including all applicable statutory requirements on making materials publicly available.
7. EPA's proposed rule under Section 111(b) for new power plants would mandate carbon capture and storage for new coal plants. This proposal itself raises serious legal questions and EPA has withdrawn the proposed rule once already.
 - a. If the 111(b) rule is struck down, what is the impact on its proposed 111(d) rule for existing power plants?
 - b. If EPA itself decides to reconsider the 111(b) rule after it is issued, will the agency put compliance with the 111(d) rule on hold? If not, why not?

A. The EPA invited comment on the legal relationship of standards for new, modified and reconstructed, and existing sources under Sections 111(b) & (d). We are currently reviewing comments received on that issue, as well as all of the more than 4.3 million comments received on the Clean Power Plan proposal, as we work towards the development of a final Clean Power Plan.

8. In the proposed guidelines for existing plants, EPA notes that all elements of a state's compliance plan must be enforceable. EPA also notes that, once EPA approves a state plan, all elements of the plan become federally enforceable and would be subject, not just to EPA enforcement actions, but to citizen suits.
 - a. Would environmental groups and other non-governmental organizations be able to sue states as a result of these guidelines?
 - b. Who else would they be able to sue? Could they sue cities? Utilities? Consumers of electricity?
 - c. Can you provide the committee with information in writing on (i) who would be able to sue to enforce a state implementation plan; and (ii) who could potentially be sued?
- A. Under the proposed rule, the states have significant discretion in determining what types of measures to adopt and submit to EPA for approval. The EPA will approve a state plan if it meets the state goal. EPA discussed the concept of federal enforceability, including the availability of citizen suits, in the preamble to the proposed rule (79 Fed. Reg. 34,830, 34,902-34,903) and the accompanying legal memorandum (Docket ID Number EPA-HQ-OAR-2013-0602-0419, PAGE 4) and the agency will review any comments we receive on this issue.**
9. In its November 2014 supplemental rule relating to the Clean Power Plan, EPA solicited comment "on the treatment of renewable energy, demand-side energy efficiency and other new low- or non-emitting electricity generation across international boundaries in a state plan." As you are aware, and as the Department of Energy's recent Quadrennial Energy Review affirms, there is significant electric integration within North America. How does EPA plan to treat electricity imported across international boundaries in the final rule?
 - A. The EPA is reviewing the comments received on how to account for electricity from international sources as we work towards the development of a final Clean Power Plan.**