

ELECTRICITY SECURITY AND AFFORDABILITY ACT

FEBRUARY 28, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3826]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3826) to provide direction to the Administrator of the Environmental Protection Agency regarding the establishment of standards for emissions of any greenhouse gas from fossil fuel-fired electric utility generating units, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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#### PURPOSE AND SUMMARY

H.R. 3826, the “Electricity Security and Affordability Act,” was introduced by Rep. Ed Whitfield on January 9, 2014, together with 59 original co-sponsors. This legislation would provide direction to the Environmental Protection Agency (EPA) regarding the agency’s pending greenhouse gas (GHG) emissions standards for fossil fuel-fired power plants. Key provisions include the following:

- The bill requires that for any GHG standards developed by the EPA for new plants, that the agency: (1) establish separate standards for natural gas and coal-fired power plants; and (2) set standards for coal-fired power plants that reflect emissions levels that have been demonstrated to be achievable using commercially available technologies.
- The bill requires that for any GHG standards, rules, or guidelines developed by the EPA for reconstructed, modified, or existing plants, that the EPA Administrator report to Congress on the cost and other impacts, and that the regulation shall not take effect unless Congress enacts a federal law specifying the effective date.

#### BACKGROUND AND NEED FOR LEGISLATION

On June 25, 2013, President Obama announced a “Climate Action Plan” that directs the EPA to establish Federal standards to reduce carbon dioxide emissions from new and existing fossil fuel-fired power plants. In a Presidential Memorandum, the President specifically directed the agency: (1) to propose standards for new plants by September 20, 2013, and to finalize those standards in a “timely fashion”; (2) to propose standards, regulations, or guidelines for modified, reconstructed, and existing plants by June 1, 2014, and to finalize those standards, regulations, or guidelines by June 1, 2015; and (3) to require States to submit implementation plans not later than June 30, 2016.

The President has directed EPA to develop these power plant standards pursuant to existing executive authorities under Section 111 of the Clean Air Act (CAA), commonly referred to as the “New Source Performance Standards” (NSPS) program. That statute authorizes EPA, in certain circumstances, to establish standards of performance under Section 111(b) for new stationary sources,<sup>1</sup> and issue guidelines under Section 111(d) for existing stationary sources.<sup>2</sup> Under section 111, a “standard of performance” is defined as:

a standard for the emissions of air pollutants which reflects the degree of emission limitation achievable through

<sup>1</sup>Section 111(b) applies to new, modified and reconstructed facilities and authorizes EPA to establish Federal standards of performance for certain stationary sources that the Administrator has determined cause or contribute “significantly to air pollution which may reasonably be anticipated to endanger public health or welfare” and to establish “standards of performance” for such sources. 42 U.S.C. §(b)(1)(B).

<sup>2</sup>Section 111(d) authorizes the EPA Administrator to prescribe regulations establishing a procedure under which States submit to the Administrator a plan establishing standards of performance for certain existing sources and certain air pollutants. 42 U.S.C. §7411(d). EPA has only invoked 111(d) for regulations of existing sources five times in the agency’s history, including for sulfuric acid plants, phosphate fertilizer plants, primary aluminum plants, Kraft pulp plants, and municipal solid waste landfills.

the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. 42 U.S.C. 7411(a)(1).

*EPA's pending CO<sub>2</sub> regulations for new power plants*

On September 20, 2013, EPA proposed “Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Generating Units” which would establish separate carbon dioxide (CO<sub>2</sub>) standards for natural gas-fired and for coal-fired electric generating units.<sup>3</sup> In the proposal, EPA effectively requires that any new coal-fired units built in the United States install carbon capture and storage (CCS) technologies, which have not been successfully demonstrated for commercial service at any full scale commercial power plant in the world.<sup>4</sup>

EPA maintains in the proposed rule that CCS technologies for new coal-fired power plants have been “adequately demonstrated” for purposes of CAA section 111 based on three government-funded CCS power plant projects under the Department of Energy’s (DOE) Clean Coal Power Initiative, including a project under construction in Mississippi, and two planned projects in Texas and California. EPA also cites a fourth small-scale, Canadian government-funded CCS post-combustion project under construction in Saskatchewan, Canada. At the November 14, 2013 legislative hearing on the discussion draft of H.R. 3826, EPA Acting Administrator Janet McCabe pointed to these four projects, all of which involve use of CO<sub>2</sub> for enhanced oil recovery, as the basis for meeting the statutory requirement that CCS technologies be adequately demonstrated for coal-fired power plants.

*Status of CCS Technologies for Commercial-Scale Power Plants:* EPA’s proposal to mandate CCS for coal-fired power plants has generated significant legal controversy because there are no power plants in commercial service anywhere in the world that have installed and operated the CCS technologies necessary to comply with the rule. None of the four government funded projects cited by EPA is in operation, and two of the projects have not yet broken ground. According to DOE’s own National Energy Technology (NETL), moreover, “these technologies are not ready in their current state of development for implementation on commercial coal-based power plants because they have not been demonstrated at appropriate scale, require approximately one-third of the plant’s steam and power to operate, and are cost prohibitive.” Consistent with these statements, at a hearing on October 29, 2013 before the House Committee on Science, Space, and Technology, DOE’s former Assistant Secretary for Fossil Energy, Charles D. McConnell, testi-

<sup>3</sup>This proposed rule replaces a prior draft rule published in April 2012 in which EPA had proposed to set a single standard for both natural gas-fired and coal-fired power plants. See 77 Fed. Reg. 22392 (April 13, 2012).

<sup>4</sup>See 79 Fed. Reg. 1430 (Jan. 8, 2014). For natural gas-fired units, the rule proposed a carbon dioxide (CO<sub>2</sub>) standard of 1,000 pounds per megawatt hour (lbs/MWh) for large units (greater than 850 mmBtu/hour), and a standard of 1,100 lbs MWh for smaller natural gas units (less than 850 mmBtu/hour), and to exempt certain units that supply less than one-third of its potential electric output to the grid. See 79 Fed. Reg. 1430 (Jan. 8, 2014). For coal-fired units, the rule proposes a standard of 1,100 lbs/MWh over 12 months, or 1,000 to 1,050 lbs/MWh over a period of 84 months (7 years). *Id.*

fied that “it is disingenuous to state that the technology is ‘ready’.”<sup>5</sup>

Numerous witnesses have testified before the Subcommittee on Energy and Power that CCS is not currently commercially viable for coal-fired power plants. For example, at the November 14, 2013 hearing on the discussion draft of H.R. 3826, witnesses testified as follows:

- Mr. Ed Chicanowiz, an engineering consultant who has designed and tested environmental controls for fossil power stations for more than four decades, testified that “CCS, at some time in the future, may prove a feasible technology to control CO<sub>2</sub> emissions.” He further testified, however, that “[i]n my opinion, we need until about 2020, to make this assessment with a reasonable degree of confidence. CCS is not commercially proven now.”

- Dr. Donald van der Vaart, Chief of the Permitting Section of the North Carolina Department of Environment and Natural Resources-Division of Air Quality, testified: “EPA’s recently proposed NSPS for utility units assumed carbon capture and storage—or CCS—has been ‘adequately demonstrated.’ One need only look at the yet to operate Kemper County Energy Facility in Mississippi, with its substantial governmental funding, as *prima facie* evidence that EPA’s conclusions are unsupported. In addition to the fact that there is not a single fossil fuel-fired utility plant operating with CCS, EPA themselves acknowledged geologic sequestration is not generally available at the emission units themselves.”

- Mr. Ross Eisenberg, Vice President, Energy and Resources Policy for the National Association of Manufacturers similarly testified: “Because CCS is neither commercially available nor cost effective for a utility-scale power generation project, the rule effectively bans the construction of any coal-fired power plant going forward.” He further testified: “Partial CCS for a utility-scale coal-fired power plant has not been adequately demonstrated and is extremely costly. The EPA can only point to four examples of CCS to support its conclusion; only two are actually under construction, and only one of those is in the United States. The EPA cannot point to a single completed, operational facility that meets the standard for coal it has chosen. While we believe CCS holds great promise as a technology, it is not ready to be deployed the way the EPA insists it will be deployed in the near term.”

Other witnesses have similarly testified before the Subcommittee regarding the technical, economic, legal and other barriers to deployment.<sup>6</sup>

<sup>5</sup> DOE’s Deputy Assistant Secretary of DOE’s Office of Clean Coal, James Wood, said in June 2012 that “our goal is to have commercially available capture and storage technologies broadly available in the public sector by 2020–2025.” See speech, The Third International Advanced Coal Technologies Conference, June 4, 2012 Xi’an, China, entitled “Carbon Capture: Opportunities and Obstacles,” James F. Wood, Deputy Assistant Secretary, Office of Clean Coal, U.S. Department of Energy available at [http://www.uwo.edu/ser/\\_files/docs/conferences/2013/china/james%20wood.pdf](http://www.uwo.edu/ser/_files/docs/conferences/2013/china/james%20wood.pdf). I September 2013, the Attorneys General of 17 states and senior environmental regulator from one additional state, wrote: “It seems incontrovertible that no post-combustion reduction system has been adequately demonstrated” for CO<sub>2</sub> emissions from EGUs on a broad, commercial scale. A system of carbon capture and storage is perhaps a decade away from being technologically and economically feasible. A permitting system for storing CO<sub>2</sub> emissions underground and a set of legal rules governing liability for CO<sub>2</sub> storage has not been put in place in most states.”

<sup>6</sup>See, e.g. Sept. 20, 2012 Testimony of Mr. Robert Hilton, Vice President, Power Technologies for Government Affairs for Alstom (“Alstom does not currently deem its technologies for CCS commercial and, to my knowledge, there are no other technology suppliers globally that can meet this criteria or are willing to make a normal commercial contract for CCS at commercial

*CCS Capital Costs and Other Limitations:* Even if all of the power plant projects cited by EPA to show CCS is “adequately demonstrated” were in operation and meeting EPA’s proposed emissions standards, the costs associated with CCS are prohibitive. At the November 14, 2013 hearing relating to H.R. 3826, Mr. Eisenberg testified: “The Energy Information Administration estimates the overnight capital cost to build a new integrated gasification combined cycle (IGCC) coal plant with CCS to be \$6,599 per kilowatt (kW). This is more than six times the price of a new NGCC plant, the natural gas standard the EPA picked as the NSPS for that fuel. It is triple the price per kW of a new onshore wind farm, double the cost per kW of new hydropower and more than \$1,000 per kW more expensive than solar or nuclear. The standard that the EPA has chosen for coal—which, by definition, must be adequately demonstrated and take into account cost—is so expensive that nobody would build it.”

Even ignoring the technical challenges and costs concerns associated with CCS, moreover, the four projects cited by EPA are all enhanced oil recovery (EOR) projects. While such projects may be suitable for certain states or regions of the country, EOR for power plants is not practicable nationally given geographic and geologic constraints. The Southern Company, which owns the Kemper project in Mississippi, has stated that the unique characteristics of the project “cannot be consistently replicated on a national level” and “should not serve as a primary basis for new emissions standards impacting all new coal-fired power plants.”

*Energy Policy Act of 2005:* EPA’s proposed standards for new plants have raised further legal controversy because the Energy Policy Act of 2005 prohibits the agency from considering technology used at a facility receiving assistance under the DOE’s Clean Coal Power Initiative (CCPI), or at a facility that is receiving an advanced coal project tax credit, as being “adequately demonstrated” for purposes of Section 111 of the CAA.<sup>7</sup> The effect of these provi-

scale.” Further, “the time to commercialization for CCS technology is not clear.”; Sept. 20, 2012 Testimony of Mark McCullough, Executive Vice President of American Electric Power (“as a consequence of our first-hand experience and intimate understanding of CCS technologies, AEP is convinced that CCS is many years from providing a commercially viable solution to reducing CO<sub>2</sub> emissions due to the numerous technical, financial, legal, and regulatory challenges that must first be addressed”); Sept. 20, 2012 Testimony of John N. Voyles, Jr., Vice President, Transmission & Generation Services for LG&E and KU Energy LLC (“the volume of storage necessary to facilitate such operations on a continuous basis for the life of an electric generating station has yet to be established. Very serious questions remain regarding the implications such injection processes have on mineral and property rights, the monitoring of the CO<sub>2</sub> plume across property lines or state boundaries and the verification systems necessary to ensure long term monitoring is taken into account.”); June 19, 2012 Testimony of Steven E. Winberg, Vice President, Research & Development for CONSOL Energy Inc. (“What is needed is commercially-available CCS technologies and this is 10 to 15 years away from the time when CCS suppliers will be able to provide performance guarantees and warranties.”)

<sup>7</sup> See 42 U.S.C. 15962(i) (“No technology, or level of emission reduction, solely by reason of the use of the technology, or the achievement of the emission reduction, by 1 or more facilities receiving assistance under this Act, shall be considered to be adequately demonstrated for purposes of section 111 of the Clean Air Act . . . .”); 26 U.S.C. 48A(g) (“No use of technology (or level of emission reduction solely by reason of the use of the technology), and no achievement of any emission reduction by the demonstration of any technology or performance level, by or at one or more facilities with respect to which a credit is allowed under this section, shall be considered to indicate that the technology . . . is adequately demonstrated for purposes of section 111 of the Clean Air Act . . . .”); see also H.R. Rept. No. 109–215 at 239–40 (July 29, 2005) (“the use of a certain technology by any facility assisted under this subtitle . . . will not result in that technology . . . being considered achievable, achievable in practice, or ‘adequately demonstrated’ for purposes of [section 111 of the Clean Air Act]”).

sions is to prevent EPA from prematurely mandating use of a technology before it is commercially viable.<sup>8</sup>

On November 15, 2013, Members of the Committee wrote to EPA regarding these provisions of the Energy Policy Act of 2005 and to request that the agency withdraw the proposed rule. While EPA failed to provide a timely response to the Committee's request and proceeded with publication of the proposed rule in the Federal Register on January 8, 2014, on February 7, 2014, EPA posted on its website a "Notice of Data Availability" and related "Technical Support Document" (TSD). These documents maintain that, notwithstanding the provisions of the Energy Policy Act of 2005, the agency can make a determination that CCS is the best system of emission reduction adequately demonstrated for new coal-fired power plants. EPA maintains that CCS for power plants is adequately demonstrated because each of the "components" of CCS has been demonstrated to be feasible, and even if not demonstrated for a facility that generates electricity, they have been demonstrated for various discrete projects in the industrial sector.

EPA's position that demonstration of the "components" of CCS in other sectors shows CCS for power plants is "adequately demonstrated" is undermined by the fact that these components have not been integrated at commercial scale and operated in commercial service in full-scale commercial power plants. Most of the additional projects cited by EPA are also DOE CCPI projects. Further, DOE is continuing to spend billions of dollars to demonstrate CCS technologies for coal-fired power plants, which would be unnecessary if the technologies were presently adequately demonstrated for commercial service in the electricity sector. Moreover, as former DOE Deputy Assistant Secretary of DOE's Office of Clean Coal, James Wood, said in June 2012: "technologies to capture and store carbon emissions from electric power plants are elusive, expensive and, although there are CO<sub>2</sub> separation technologies in use in the natural gas and chemical processing industries, there has not yet been widespread deployment in the electric power industry, and there is little history of the integration of these technologies with electric generation in reliable or cost-effective modes."<sup>9</sup>

*Electricity Prices and Fuel Diversity:* In addition to the above, the proposed CCS mandate has generated controversy because of its potential impacts on the diversity, affordability and reliability of the nation's electricity supplies. The nation's electricity generation fleet is currently experiencing a dramatic shift, away from coal-fired generation and increasingly towards use of natural gas and renewable energy sources, spurred by low natural gas prices and a suite of new environmental regulations. This shift will largely occur over the next few years as natural gas prices are expected to remain low and recent environmental regulations accelerate the retirement of a significant portion of the nation's coal-fired power

<sup>8</sup>To the extent that some have argued that CCS technologies should be viewed like scrubbers in the 1970s, this is not an appropriate analogy. When EPA was seeking to mandate "wet scrubbers" in the 1970s, scrubbers, unlike CCS technologies, were actually in use in 3 power plants and construction underway at another 15 power plants, none of which received subsidies. 37 Fed. Reg. 5767, 5768 (March 21, 1972).

<sup>9</sup>See, Speech at The Third International Advanced Coal Technologies Conference, June 4, 2012 Xi'an, China, "Carbon Capture: Opportunities and Obstacles," James F. Wood, Deputy Assistant Secretary, Office of Clean Coal, U.S. Department of Energy, *supra*.

plants, expected primarily between 2014 and 2016.<sup>10</sup> As recently as February 14, 2014, EIA has projected that there will be more coal-fired power plant retirements by 2016 than have been scheduled, and that 60 gigawatts (GW) of capacity will retire by 2020.

At the November 14, 2013 legislative hearing relating to H.R. 3826, Oklahoma Attorney General E. Scott Pruitt, testified: “EPA’s proposed EGU NSPS would foreclose the construction of new coal-based electric generation absent carbon capture and storage (“CCS”), yet CCS is likely to remain commercially infeasible for a decade or more.” He further testified: “The elimination of coal as a fuel for new electric generation would have highly concerning implications for electricity prices and for the economy and job-creation in general, as well as the competitiveness of American manufacturing.”

The President and CEO of East Kentucky Power Cooperative, Tony Campbell, also testified that: “Coal-fired generation is essential to ensure energy diversity and to keep electricity prices low. Although natural gas prices are currently low, recent data from the United States Energy Information Administration (“EIA”) shows that natural gas prices have increased by more than 50% since April 2012.”

More recently, at a February 11, 2014 hearing before the Subcommittee on Oversight and Investigations, DOE Deputy Assistant Secretary for Clean Coal, Office of Fossil Energy at the Department of Energy, Julio Friedmann, testified that CCS for new coal plants could increase electricity costs dramatically, stating that for the first generation technology for a pulverized coal plant adding CCS “looks something like a 70 or 80 percent increase on the wholesale price of electricity.”

*Precedential Effect of Proposed Regulation:* Finally, the proposed rule has generated controversy because of concerns that EPA’s proposed CCS mandate for new coal plants will set a precedent for other types of facilities, including refineries and other sources subject to regulation under CAA section 111. Mr. Eisenberg testified at the November 14, 2013 hearing that: “In the proposal, the EPA cannot point to a single operating facility in the United States that uses partial CCS, a technology the EPA insists is ‘adequately demonstrated.’ In addition, the EPA for years has maintained the practice that it cannot require facilities to ‘redefine the source’; it can dictate a standard of performance, but not pick a technology. Here, the EPA clearly picked a technology (IGCC) that is fundamentally different from a coal-fired boiler. A precedent based on choosing IGCC with partial CCS as the best system of emissions reduction could have wide-ranging consequences for other industries receiving a GHG NSPS.”

<sup>10</sup> See NERC, 2013 Long-Term Reliability Assessment, Dec. 2013 (“The amount of coal-fired generation during peak is expected to decline substantially, as 39.4 GW of retirements and derates outpace 4.3 GW of new additions, resulting in a net reduction of 35.1 GW by 2023. Most unit retirements are planned between 2014 and 2016, when requirements of environmental regulations become effective.”) The 2014–2016 timeframe is triggered by the Environmental Protection Agency’s (EPA) Mercury and Air Toxics Standards (MATS) (a/k/a “Utility MACT”) rule which is scheduled to take effect in April 2015, with a deadline that may be extended by up to one year by state permitting agencies. In addition to coal retirements, NERC has identified a variety of emerging reliability challenges, including challenges associated with reliably integrating high variable renewable generation, nuclear generation retirements, and other challenges. *Id.* at pp. 2–4.

*EPA's pending CO<sub>2</sub> regulations for existing power plants*

Pursuant to the President's Climate Action Plan, EPA is also proceeding to develop CO<sub>2</sub> regulations for existing plants. In the Fall of 2013, EPA conducted "Listening Sessions" and also released a document dated September 23, 2013 that it referred to as "Questions for States" and was entitled "Considerations in the Design of a Program to Reduce Carbon Pollution from Existing Power Plants."<sup>11</sup>

At the November 14, 2013 legislative hearing on H.R. 3826, Assistant Administrative Janet McCabe, rejected the view that states, rather than EPA, would set standards of performance. Specifically, she testified that: "It is EPA's role to set the guideline, the target." When asked whether it was states or EPA that would have the actual authority to set the performance standards for existing plants, she testified that "EPA will set the target, but states will have flexibility to meet that in whatever way makes sense to them. So it does not need to be a unit by unit regulation, or expectation."

There is significant concern that the agency will seek to set standards that go beyond the scope of the agency's legal authorities under section 111(d). At the November 14, 2013 hearing relating to H.R. 3826, Oklahoma Attorney General E. Scott Pruitt testified that "[i]n recent years the EPA has expressed an unwillingness to appropriately defer to state authority under the Clean Air Act." Further, he and the Attorneys General of 16 other states sent a white paper to EPA in September 2013 in which they stated: "In contemplating regulation of existing EGUs, however, EPA appears poised to go beyond the establishment of procedures and usurp the states' authority by setting minimum *substantive* requirements for state performance standards."<sup>12</sup> They further stated: "The prospect for EPA adoption of GHG performance standards for new or existing coal-based EGUs raises serious concerns. EPA's aggressive standards for new coal-based EGUs indicate a similarly aggressive approach to existing coal-based EGUs. While EPA is authorized to require States to submit plans containing performance standards, EPA may not dictate what those performance standards shall be. Nor may EPA require States to adopt GHG performance standards that are not based on adequately demonstrated technology or that mandate, in the guise of 'flexible approaches,' the retirement or reduced operation of still-viable coal-based EGUs."

Dr. Van der Vaart also testified at the November 14, 2013 hearing that there were significant legal questions about EPA's authority to regulate under section 111(d). Even in cases where EPA does

<sup>11</sup>In that document, EPA expresses its view that the agency may take either a "source-based approach" or a "system-based approach" to regulation under section 111(d). EPA specifically asks states to provide information regarding their experience with "programs that reduce CO<sub>2</sub> emissions in the electric power sector," including "greenhouse gas (GHG) emissions performance standards, emissions budget trading programs, resource planning requirements, end-use energy efficiency resource standards, renewable energy portfolio standards, and appliance and building code energy standards."

<sup>12</sup>The Attorneys General further expressed concern that: "In short, EPA may attempt to force coal-fueled EGUs to decrease operation time or retire early, or force utilities to rely more heavily on natural gas and other resources in an effort to ensure greater CO<sub>2</sub> emission reductions. Such proposals, often offered as ways of providing "flexibility," do not conform to the limitations Congress has placed on EPA in the Clean Air Act, nor do they properly preserve the primary role of States in the development of standards of performance for existing sources. Under § 111(d), it is the States, not EPA, that are authorized to adopt performance standards; therefore it is the States, not EPA, that weigh the § 111(a)(1) factors to determine what technology is adequately demonstrated."



have authority to establish emissions guidelines, however, he testified that that authority is limited: “EPA is not authorized to impose emissions standards on existing sources. Rather, EPA can only establish a unit-specific guideline that describes what control technologies have been demonstrated. Once EPA provides that guideline, section 111(d) allows States to develop unit specific emission standards after considering many factors including the cost, physical constraints on installing controls, and the remaining useful life of the emission units. The plain language of the Act as well as legal precedent precludes EPA and States from designing a standard that relies on reductions made outside of the emissions unit. Any flexibility in compliance with a standard based on a specific emission unit resides with the States who have the primary responsibility for implementation of this program.”

Mr. Campell also testified at that hearing that “EKPC’s greatest apprehension relates to regulations for existing sources. EKPC operates three baseload power plants fueled by coal and one plant operated by natural gas-fired combustion turbines. EKPC has invested almost \$1 billion in retrofitting existing coal-fired power plants with modern air pollution control equipment. Further, EKPC spent another \$1 billion to construct two of the cleanest coal units in the country. An existing source rule that requires CCS would leave EKPC with no choice but to convert these units to natural gas, essentially wasting the extensive capital investments that have been made to lower pollutants from the coal-fired units.” Further, “EKPC is very worried about the supply of electricity to its rural cooperative members and its cost. There is a lack of technology that would allow EKPC to control GHG emissions, and a lack of demonstrated benefits to the environment. Most if not all coal-fired units will be forced to retire as a result of the regulation of GHG emissions, which would astronomically increase electricity rates and ultimately cause further job losses.”

While EPA has not yet proposed standards for existing power plants, the costs and job impacts of such regulations have the potential to be very significant given coal-fired power generation currently supplies approximately 40 percent of the nation’s electricity. At the November 14, 2013 hearing, Stephen Hawkins of the Natural Resources Defense Council (NRDC) maintained that his organization’s cap-and-trade proposal for regulation of existing plants would cost about \$4 billion annually. At the hearing, however, a November 13, 2013 letter from the American Coalition for Clean Coal Electricity to Chairman Whitfield was submitted which stated that National Economic Research Associates has preliminarily estimated that the costs of the NRDC proposal could result in “total costs to consumers of as much as \$145 billion” between 2018–2033, and could result in more than 2.85 million jobs lost over the next two decades.

#### *Additional considerations*

Any regulations of CO<sub>2</sub> emissions from U.S. power plants should be viewed in the context of overall global emissions. U.S. GHG emissions represent only 19% of global emissions according to EPA, and that share is declining every year as China and other developing economies increase their use of energy. U.S. energy related CO<sub>2</sub> emissions have declined dramatically and are likely to remain

flat in the coming years. In April 2013, EIA reported that U.S. CO<sub>2</sub> emissions resulting from energy use were at their lowest levels since 1994. More recently, EIA projected total U.S. energy-related emissions of CO<sub>2</sub> will remain below the 2005 level in every year through 2040, and will be more than seven percent below their 2005 level in 2040.<sup>13</sup>

Any regulations of CO<sub>2</sub> emissions from U.S. power plants should also be examined to determine whether they will have any meaningful impact on future global climate changes. Administrator McCarthy, at a September 18, 2013 hearing before the Subcommittee, when asked about whether EPA can solve the problems of climate change, testified: “I think what you are asking is can EPA in and of itself solve the problems of climate change. No, we cannot.” In response to questions from Representative Pompeo regarding whether EPA regulatory actions will have a meaningful impact on climate indicators, she acknowledged that it is “unlikely that any specific one step is going to be seen as having a visible impact on any of those impacts, a visible change in any of those impacts.”

#### *What the Act will do*

H.R. 3826 would ensure that any standards established by EPA for new power plants would be achievable based on technologies that have actually been demonstrated at commercial power plants, rather than based on what EPA expects will be demonstrated in the future. H.R. 3826, further, would ensure that EPA’s pending GHG regulations for existing plants would be subject to Congressional approval.

In particular, for new power plants, H.R. 3826 provides that any rule establishing GHG standards for new plants may not be issued unless the EPA Administrator: (1) establishes separate standards for natural gas and coal-fired plants; (2) sets standards for the coal category that have been achieved over a one-year period by at least 6 units located at different commercial power plants in the United States; and (3) establishes a subcategory for coal-fired plants that use lignite coal and sets standards that have been achieved over a one-year period by at least 3 units located at different commercial power plants in the United States.

For existing power plants, H.R. 3826 provides that any rule establishing GHG standards or guidelines applicable to modified, reconstructed, or existing plants shall not take effect unless a federal law is enacted specifying the effective date. Further, for any such rule, the bill would also require that the EPA Administrator submit a report to Congress regarding the proposed rule, its economic impacts, and the projected effects on global GHG emissions.

H.R. 3826 would also repeal EPA’s earlier proposed rules for new power plants, including the rule announced on September 20, 2013, any subsequently issued rules for new plants that do not meet the requirements of the bill, and any GHG standards or guidelines applicable to modified, reconstructed or existing plants issued prior to the date of enactment.

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<sup>13</sup> See EIA “AEO2014 Early Release Overview.”

*Supporters of the legislation*

The legislation is supported by a broad coalition representing virtually all aspects of the U.S. economy. Supporters include:

American Chemistry Council  
 American Coalition for Clean Coal Electricity  
 American Farm Bureau Federation  
 American Forest & Paper Association  
 American Fuel and Petrochemical Manufacturers  
 American Iron and Steel Institute  
 America's Natural Gas Alliance  
 American Petroleum Institute  
 American Public Power Association  
 Association of American Railroads  
 Council of Industrial Boiler Owners  
 Electric Reliability Coordinating Council  
 Industrial Consumers of America  
 Industrial Minerals Association—North America  
 International Liquid Terminals Association  
 National Association of Manufacturers  
 National Federation of Independent Business  
 National Mining Association  
 National Oilseed Processors Association  
 National Rural Electric Cooperative Association  
 National Taxpayers Union  
 Portland Cement Association  
 The Fertilizer Institute  
 U.S. Chamber of Commerce  
 United Mine Workers

## HEARINGS

The Subcommittee held a hearing on the discussion draft of H.R. 3826 on November 14, 2013. The Subcommittee received testimony from:

- Joe Manchin, Senator, West Virginia;
- Janet McCabe, Acting Administrator for Air and Radiation, U.S. Environmental Protection Agency;
- E. Scott Pruitt, Oklahoma Attorney General;
- Henry Hale, Mayor, Fulton, Arkansas;
- Tony Campbell, President and CEO, East Kentucky Power Cooperative;
- Donald R. van der Vaart, Chief, Permitting Section, North Carolina Department of Environmental and Natural Resources-Division of Air Quality;
- David Hawkins, Director of Climate Programs, Natural Resources Defense Council;
- Susan F. Tierney, Managing Principal, Analysis Group;
- J. Edward Cichanowicz, Engineering Consultant; and
- Ross Eisenberg, Vice President, Energy and Resources Policy, National Association of Manufacturers.

## COMMITTEE CONSIDERATION

On January 13 and 14, 2014, the Subcommittee on Energy and Power met in open markup session, and forwarded H.R. 3826 to the full Committee, by a roll call vote of 18 ayes and 11 nays. Dur-

ing the markup, one amendment was offered and was rejected a roll call vote.

On January 27 and 28, 2014, the Committee on Energy and Commerce met in open markup session to consider H.R. 3826. During the markup, five amendments were offered, of which 4 were rejected by record votes, and 1 by voice vote. A motion by Mr. Upton to order H.R. 3826, reported to the House, without amendment, was agreed to by a record vote of 29 ayes and 19 nays.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 3626 reported to the House, without amendment, was agreed to by a roll call vote of 29 ayes and 19 nays. The following reflects the roll call votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 32**

**BILL: H.R. 3826**, the "Energy Security and Affordability Act"

**AMENDMENT:** An amendment offered by Mr. Waxman, No. 1, to provide that the provisions of H.R. 3826 shall take effect when the Administrator of the Energy Information Administration certifies that a Federal program, other than a program under section 111 of the Clean Air Act (42 U.S.C. 7411), will reduce carbon dioxide emissions from fossil fuel-fired electric utility generating units, or from sources economy-wide, in at least equivalent quantities and with similar timing to the carbon pollution reductions required in the aggregate by the rules and guidelines listed in paragraphs (2), (3), and (4) of section 4 of the bill.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 18 yeas and 28 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton				Mr. Pallone	X		
Mr. Whitfield		X		Mr. Rush			
Mr. Shimkus		X		Ms. Eshoo			
Mr. Pitts		X		Mr. Engel	X		
Mr. Walden		X		Mr. Green	X		
Mr. Terry		X		Ms. DeGette	X		
Mr. Rogers				Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess		X		Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson		X	
Mr. Gingrey		X		Mr. Butterfield			
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Christensen			
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy				Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 33**

**BILL: H.R. 3826**, the "Energy Security and Affordability Act"

**AMENDMENT:** An amendment offered by Mr. Yarmuth, No. 2, to authorize qualified industry organizations to conduct a referendum among the owners or operators of distribution utilities delivering fossil fuel-based electricity for the creation of a Carbon Storage Research Corporation to establish and administer a program to accelerate the deployment of carbon dioxide capture and storage technologies and methods.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 16 yeas and 30 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Pallone			
Mr. Whitfield		X		Mr. Rush			
Mr. Shimkus		X		Ms. Eshoo			
Mr. Pitts		X		Mr. Engel			
Mr. Walden		X		Mr. Green			
Mr. Terry		X		Ms. DeGette	X		
Mr. Rogers				Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess		X		Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson		X	
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Christensen			
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 34**

**BILL: H.R. 3826**, the "Energy Security and Affordability Act"

**AMENDMENT:** An amendment offered by Ms. Schakowsky, No. 3, to adopt the Environmental Protection Agency finding that greenhouse gas emissions threatens public health and welfare by contributing to long-lasting changes in our climate that can have a range of negative effects on human health and the environment.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 20 yeas and 24 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Pallone	X		
Mr. Whitfield		X		Mr. Rush			
Mr. Shimkus				Ms. Eshoo			
Mr. Pitts		X		Mr. Engel			
Mr. Walden		X		Mr. Green	X		
Mr. Terry		X		Ms. DeGette	X		
Mr. Rogers				Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess		X		Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson	X		
Mr. Gingrey				Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Christensen			
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy				Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers							

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 35**

**BILL: H.R. 3826**, the "Energy Security and Affordability Act"

**AMENDMENT:** An amendment offered by Ms. Capps, No. 4, to alter the bill's requirement that any greenhouse standards established under section 111 of the Clean Air Act (42 U.S.C. 7411) for new coal-fired electric generating units be demonstrated to be achievable at plants in the United States, and would allow the agency to base such standards on demonstration of the technologies by electric generating units located outside the United States.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 18 yeas and 26 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Pallone	X		
Mr. Whitfield		X		Mr. Rush			
Mr. Shimkus				Ms. Eshoo			
Mr. Pitts		X		Mr. Engel			
Mr. Walden		X		Mr. Green	X		
Mr. Terry		X		Ms. DeGette	X		
Mr. Rogers				Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess		X		Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson		X	
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Christensen			
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy				Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis							
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers							

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**COMMITTEE ON ENERGY AND COMMERCE – 113TH CONGRESS  
ROLL CALL VOTE # 36**

**BILL: H.R. 3826**, the “Energy Security and Affordability Act”

**AMENDMENT:** A motion by Mr. Upton to order H.R. 3826 favorably reported to the House, as amended.  
(Final Passage)

**DISPOSITION: AGREED TO**, by a roll call vote of 29 yeas and 19 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Hall	X			Mr. Dingell		X	
Mr. Barton	X			Mr. Pallone		X	
Mr. Whitfield	X			Mr. Rush			
Mr. Shimkus				Ms. Eshoo			
Mr. Pitts	X			Mr. Engel		X	
Mr. Walden	X			Mr. Green		X	
Mr. Terry	X			Ms. DeGette		X	
Mr. Rogers				Mrs. Capps		X	
Mr. Murphy	X			Mr. Doyle		X	
Mr. Burgess	X			Ms. Schakowsky		X	
Mrs. Blackburn	X			Mr. Matheson	X		
Mr. Gingrey	X			Mr. Butterfield		X	
Mr. Scalise	X			Mr. Barrow	X		
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers	X			Ms. Christensen			
Mr. Harper	X			Ms. Castor		X	
Mr. Lance	X			Mr. Sarbanes		X	
Mr. Cassidy				Mr. McNerney		X	
Mr. Guthrie	X			Mr. Braley		X	
Mr. Olson	X			Mr. Welch		X	
Mr. McKinley	X			Mr. Lujan		X	
Mr. Gardner	X			Mr. Tonko		X	
Mr. Pompeo	X			Mr. Yarmuth		X	
Mr. Kinzinger	X						
Mr. Griffith	X						
Mr. Bilirakis	X						
Mr. Johnson	X						
Mr. Long	X						
Mrs. Ellmers	X						

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## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 3826 provides direction to EPA regarding the agency's pending GHG regulations for power plant rules to ensure continued access to diverse, reliable, and affordable electricity supplies in the United States.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3826 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 3826 contains no earmarks, limited tax benefits, or limited tariff benefits.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 12, 2014.*

Hon. FRED UPTON,  
*Chairman, Committee on Energy and Commerce,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3826, the Electricity Security and Affordability Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 3826—Electricity Security and Affordability Act*

Summary: On January 8, 2014, the Environmental Protection Agency (EPA) published a proposed rule that would establish uni-

form national limits on greenhouse gas (GHG) emissions from new electricity-generating facilities that use coal or natural gas. The rule also sets new standards of performance for those power plants, including the requirement to install carbon capture and sequestration technology. H.R. 3826 would repeal this pending rule and place new requirements on any future regulations addressing GHG emissions from new or existing power plants.

CBO estimates that implementing this legislation would cost \$2 million over the 2015–2019 period, subject to the availability of appropriated funds. Enacting H.R. 3826 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3826 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

**Estimated cost to the Federal Government:** CBO estimates that implementing H.R. 3826 would cost \$2 million over the next five years. The costs of this legislation fall within budget function 300 (natural resources and environment).

**Basis of estimate:** For this estimate, CBO assumes that H.R. 3826 will be enacted by the end of 2014 and that the necessary amounts to implement the legislation will be appropriated. Under the bill, CBO expects that EPA would need two years to develop new regulations—using requirements specified in H.R. 3826—for GHG emissions from new power plants. Based on the cost of developing the regulations published in January 2014, CBO estimates that work would cost \$4 million. We also estimate that implementing and enforcing the new rule would cost \$3 million over the 2017–2019 period. However, because we expect EPA will spend about \$5 million over the same period under current law to implement and enforce the rule published in January 2014, the net additional cost of implementing H.R. 3826 would total about \$2 million over the next five years.

**Pay-As-You-Go considerations:** None.

**Intergovernmental and private-sector impact:** H.R. 3826 contains no intergovernmental or private-sector mandates as defined in UMRA.

**Estimate prepared by:** Federal costs: Susanne S. Mehlman; Impact on state, local, and tribal governments: Lisa Ramirez-Branum; Impact on the private sector: Amy Petz.

**Estimate approved by:** Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3826 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 3826 specifically directs to be completed no specific rulemakings within the meaning of 5 U.S.C. 551.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1:* This section provides the short title of “Electricity Security and Affordability Act.”

*Section 2:* This section provides direction relating to the establishment of standards for new fossil fuel-fired electricity generating units (EGUs).

Section 2(a) provides that the EPA Administrator may not issue, implement, or enforce any proposed or final rule under section 111 of the CAA that establishes GHG emissions standards for new fossil fuel-fired EGUs unless the Administrator meets the requirements of subsections (b) and (c).

Section 2(b) provides that the Administrator must establish separate source categories for new EGUs fueled with coal and natural gas. This section provides that for the coal category, the EPA Administrator may not set a standard unless it has been achieved for a continuous 12-month period by at least 6 EGUs located at different power plants in the U.S., which collectively are representative of the operating characteristics of EGUs at different locations in the U.S., and which have operated for the entire 12-month period on a full commercial basis.

Section 2(c) further provides for the coal category that the Administrator must establish a subcategory for new EGUs fueled by lignite coal, and may not set a standard for that subcategory unless it has been achieved for a continuous 12-month period by at least 3 EGUs located at different power plants in the U.S., which collectively are representative of the operating characteristics of EGUs at different locations in the U.S., and which have operated for the entire 12-month period on a full commercial basis.

Sections 2(b) and (c) also provide that in establishing standards for the coal category, the Administrator may not set the standards based on results from a demonstration project.

*Section 3:* This section provides that any rules or guidelines issued by the Administrator establishing standards of performance under CAA section 111 for modified or reconstructed fossil fuel-fired EGUs, or guidelines for existing fossil fuel-fired EGUs, will not take effect unless a Federal law is enacted specifying such rule’s or guidelines’ effective date. The section further provides that such rules or guidelines may not take effect unless the Administrator has submitted to Congress a report containing (1) the text

of such rule or guidelines; (2) the economic impacts of such rule or guidelines, including potential effects on economic growth, competitiveness and jobs, and on electricity ratepayers; and (3) the amount of GHG emissions that such rule or guidelines are projected to reduce as compared to overall GHG emissions.

*Section 4:* This section provides that the EPA's proposed standards for new fossil fuel-fired EGUs, and any substantially similar rules that do not meet the requirements of section 2 of this Act, are of no force and effect. The section further provides that any rules or guidelines for modified, reconstructed, or existing fossil fuel-fired EGUs promulgated prior to enactment of the Act are also of no force and effect.

*Section 5:* This section contains the following definitions:

(1) "Demonstration project" means a project to test or demonstrate the feasibility of carbon capture and storage technologies that has received government funding or financial assistance.

(2) "Existing source" has the meaning given such term in CAA section 111(a), except that such term shall not include any modified source.

(3) "Greenhouse gas" means any of the following: carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, or perfluorocarbons.

(4) "Modification" has the meaning given such term in CAA section 111(a).

(5) "Modified source" means any stationary source, the modification of which is commenced after the date of enactment of the Act.

(6) "New source" has the meaning given such term in CAA section 111(a), except that such term shall not include any modified source.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

## DISSENTING VIEWS

### I. SUMMARY

On June 25, 2013, President Obama announced a Climate Action Plan to cut carbon pollution and prepare for the effects of climate change.<sup>1</sup> In that Plan, he directed the Environmental Protection Agency (EPA) to use its existing authority under the Clean Air Act to control carbon pollution from new and existing fossil fuel-fired power plants.<sup>2</sup> President Obama simultaneously issued a Presidential Memorandum on Power Sector Carbon Pollution Standards providing more detailed direction to EPA, including deadlines.<sup>3</sup> The memorandum set deadlines of September 20, 2013, for a new proposed rule for new plants; June 1, 2014, and June 1, 2015, for proposed and final rules, respectively, for existing plants; and June 30, 2016, for states to submit plans for regulating existing plants.<sup>4</sup> On September 20, 2013, EPA issued proposed carbon pollution standards for new coal- and natural gas-fired power plants.<sup>5</sup> EPA has held listening sessions across the country to discuss its forthcoming proposal for existing plants.<sup>6</sup>

H.R. 3826 would block EPA's proposed carbon pollution standards for both new and existing coal-fired power plants, which are the largest stationary sources of carbon pollution in the country.<sup>7</sup> Existing coal plants alone account for roughly one-third of the nation's carbon dioxide emissions.<sup>8</sup> Thus, blocking EPA's standards would significantly impair efforts to address climate change. Supporters of this bill claim that this bill is needed to ensure that EPA's standards for coal are achievable. But in reality, this bill would prevent EPA from addressing carbon pollution from coal regardless of the availability of effective pollution controls.

This bill would set conditions for EPA's regulation of new coal-fired power plants that will never be met, ensuring that carbon pollution from these plants remains uncontrolled. Under this bill, EPA would only be permitted to set standards for new coal plants if the power sector first voluntarily broadly adopts the pollution controls

<sup>1</sup> Executive Office of the President, The President's Climate Action Plan (Jun. 2013) (online at [www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf](http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf)).

<sup>2</sup> *Id.* at 6.

<sup>3</sup> President Barack Obama, Presidential Memorandum—Power Sector Carbon Pollution Standards (Jun. 25, 2013) (online at [www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards](http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards)).

<sup>4</sup> *Id.*

<sup>5</sup> U.S. Environmental Protection Agency, Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units; Proposed Rule, 79 Fed. Reg. 1430 (Jan. 8, 2014) (hereinafter GHG Performance Standards NPRM) (online at [www.gpo.gov/fdsys/pkg/FR-2014-01-08/pdf/2013-28668.pdf](http://www.gpo.gov/fdsys/pkg/FR-2014-01-08/pdf/2013-28668.pdf)).

<sup>6</sup> U.S. Environmental Protection Agency, Carbon Pollution Standards; Public Listening Sessions (online at [www2.epa.gov/carbon-pollution-standards/public-listening-sessions](http://www2.epa.gov/carbon-pollution-standards/public-listening-sessions)).

<sup>7</sup> U.S. Environmental Protection Agency, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2011 (Apr. 12, 2013) (online at [www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2013-Main-Text.pdf](http://www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2013-Main-Text.pdf)).

<sup>8</sup> *Id.*

needed to comply with these standards, without any government mandate, funding, or financial assistance. This simply will not occur. Economists view pollution as a classic “market failure,” in which every firm has an incentive to pollute, even though the combined effects of such pollution make society as a whole worse off. Controlling pollution reduces firms’ profits, or at best diverts resources that otherwise could be more profitably deployed. Thus, competitive firms do not generally control their pollution absent non-market incentives, such as government regulation or financial assistance. There is no reason to believe that this situation is different when it comes to carbon pollution.

Supporters of this bill argue that the bill’s extreme restrictions on EPA’s standard-setting authority are needed because EPA’s proposed standard for new coal-fired power plants would require use of partial carbon capture and sequestration (CCS) technology, which they claim is unavailable. This claim is false. EPA’s proposed standard is based on a wealth of evidence that partial CCS is available, feasible, has been used commercially for decades, and is scheduled to come online in full-scale commercial applications at coal-fired power plants in the United States and abroad in 2014. Moreover, EPA’s proposal is consistent with the requirements of the Clean Air Act and with decades of agency practice and judicial precedent on issues ranging from smog to acid rain.

This bill would also ensure that carbon pollution from existing coal-fired power plants remains uncontrolled by requiring that Congress pass a new federal law before EPA can address these emissions. This has the effect of revoking EPA’s existing authority to act. Moreover, EPA has not yet issued a proposed standard for existing coal plants, and EPA has been engaging in extensive stakeholder outreach to determine the best way forward. Nevertheless, this bill would end EPA’s efforts without even knowing what EPA may propose.

In committee, Democratic members offered amendments, among others, to delay this bill’s effect until another federal program could be identified to reduce carbon pollution, to allow EPA’s proposed new coal plant standards to move forward, but with federal funding to help utilities install CCS, and to modify provisions of this bill that would prevent EPA from setting standards based on available pollution controls. The majority rejected each of these amendments. In a party line vote, Republican members even rejected an amendment that simply acknowledged the scientific fact that “[g]reenhouse gas (GHG) pollution threatens the American public’s health and welfare by contributing to long-lasting changes in our climate that can have a range of negative effects on human health and the environment.” No Democratic members voted to deny this climate science.

In sum, H.R. 3826 is a radical rewrite of the Clean Air Act, and represents a significant step backward in addressing climate change. The following sections provide additional background on EPA’s Clean Air Act authority, EPA’s proposed standards for new and existing coal-fired power plants, and the specific provisions of and numerous problems with this bill.

## II. EXISTING EPA AUTHORITY AND ACTIONS ON POWER PLANT EMISSIONS OF CARBON POLLUTION

President Obama's June 25, 2013, memorandum directs EPA to use the agency's existing authority under section 111 of the Clean Air Act to control carbon pollution from both new and existing fossil-fuel fired power plants. EPA's September 20, 2013, proposal for new coal- and natural gas-fired power plants and its forthcoming proposal for existing fossil fuel-fired power plants responds to the President's directive and to the direction and requirements of section 111.

### A. *Clean Air Act authority*

Section 111 of the Clean Air Act directs EPA to set performance standards to control air pollution from new stationary sources. Section 111(b) requires these standards to "reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated."<sup>9</sup> Over the long history of this provision, which has been part of the Clean Air Act in various forms since 1970, the D.C. Circuit has provided guidance to EPA on how to interpret and implement this directive.<sup>10</sup> The key considerations for setting a section 111(b) standard are technical feasibility, quantity of emissions reductions, costs that are reasonable (i.e., not exorbitant), and advancing pollution-control technology.<sup>11</sup>

The advancement of pollution-control technology is intended to force the adoption of new, innovative, and more effective technologies, and not simply those technologies that have already been widely adopted. This intent is clearly stated both in the requirement for "best system of emission reduction" and in the legislative history. For example, the Senate Committee Reports for the 1970 and 1977 Clean Air Act Amendments explain that new source performance standards "should provide an incentive for industries to work toward constant improvement"<sup>12</sup> and "stimulate the development of new and better technology."<sup>13</sup> In interpreting this mandate, the D.C. Circuit has noted that the statute "embraces . . . technological innovation."<sup>14</sup>

In addition, section 111(d) requires EPA to issue rules to direct states to reduce pollution from existing sources that would have been covered by a section 111(b) standard if they were new sources, with respect to air pollutants that are neither covered by a National Ambient Air Quality Standard (NAAQS) or listed as a hazardous air pollutant under section 112 (i.e., that are not otherwise regulated). Section 111(d) provides that the state regulations for existing sources are required under a procedure analogous to the

<sup>9</sup> Clean Air Act § 111(b).

<sup>10</sup> U.S. Environmental Protection Agency, GHG Performance Standards NPRM.

<sup>11</sup> *Id.* at 1462.

<sup>12</sup> Senate Committee on Public Works, National Air Quality Standards Act of 1970, at 17, 91st Cong. (Sept. 17, 1970) (S. Rept. 91-1196).

<sup>13</sup> Senate Committee on Environment and Public Works, Clean Air Amendments of 1977, at 17, 95th Cong. (May 10, 1977) (S. Rept. 95-127).

<sup>14</sup> *Sierra Club v. Costle*, 657 F.2d 298, 346 (D.C. Cir. 1981).



requirements for State Implementation Plans (SIPs) under section 110. The SIP provisions explicitly allow state plans to include “economic incentives such as fees, marketable permits, and auctions of emissions rights.”<sup>15</sup> Thus, states have considerable flexibility to design their own standards, subject to the overall pollution reduction goals for these sources established by EPA by rule. EPA can step in and regulate existing sources directly if a state fails to develop and enforce adequate requirements.

#### *B. EPA’s proposed rule for new sources*

##### *1. Proposed standards of performance*

EPA has proposed to set standards of performance for carbon dioxide (CO<sub>2</sub>) emissions from new coal-fired power plants based on a finding that technology to partially capture carbon emissions from these plants is the “best system of emission reduction . . . adequately demonstrated.”<sup>16</sup> Specifically, EPA proposes to allow new coal-fired units to meet either a limit of 1,100 pounds of CO<sub>2</sub> per megawatt hour (lbs CO<sub>2</sub>/MWh), if met over a 12-month period, or 1,000–1,050 lbs CO<sub>2</sub>/MWh, if met over a more flexible 84-month (seven-year) period. EPA also proposes to set standards for natural gas-fired units based on the emission reductions achieved by natural gas combined cycle units of 1,000 lbs CO<sub>2</sub>/MWh for larger units. To meet the 1,100 lbs CO<sub>2</sub>/MWh standard for new coal-fired units, power plant operators will need to install partial carbon capture and sequestration (CCS) technology sufficient to reduce CO<sub>2</sub> emissions by 30% to 50% below units without CCS.<sup>17</sup>

EPA’s proposal finds that partial CCS is the best system of emission reduction because it is technically feasible, achieves significant CO<sub>2</sub> reductions, provides an incentive for technological innovation, and has reasonable costs, which means that the costs can be accommodated by the industry.<sup>18</sup> The proposal relies upon extensive technical information including findings of the 2010 Interagency Task Force on CCS, which was established by President Obama, studies and reports from the Department of Energy national laboratories, particularly the National Energy Technology Laboratory, which focuses on fossil fuel technologies, and results from demonstration projects and full-scale CCS projects that are in operation or under construction or development at power plants and other industrial facilities.<sup>19</sup>

<sup>15</sup> Clean Air Act § 110(a)(2)(A).

<sup>16</sup> U.S. Environmental Protection Agency, GHG Performance Standards NPRM. Note that EPA had issued a previous proposal to set carbon pollution performance standards for these sources in April 2012, but decided to withdraw that proposal and re-propose in this notice.

<sup>17</sup> *Id.* at 1436.

<sup>18</sup> *Id.* at 1467–1485.

<sup>19</sup> *Id.* The majority claims that EPA’s proposal violates provisions in the Energy Policy Act of 2005 that bar EPA from considering the use of technology at a facility that received federal financial assistance under that Act to determine whether the technology is “adequately demonstrated” for the purposes of Clean Air Act section 111. Letter from Chairman Upton and Chairman Whitfield to U.S. Environmental Protection Agency Administrator McCarthy (Nov. 15, 2013) (online at [energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/letters/20131115EPA.pdf](http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/letters/20131115EPA.pdf)). These claims are based on an erroneous interpretation of the provisions, which prohibit EPA from making a section 111 determination based solely on the use of technology at a federally funded demonstration project, but do not preclude all use of such information as supporting evidence, as well as a misreading of EPA’s proposal, which cites extensive other evidence supporting the proposed finding. See, e.g., Environmental Defense Fund, The Strong Legal Foundation for the Carbon Pollution Standards for New Power Plants: A Response

With respect to costs, EPA notes several key points. First, very few new coal-fired units are projected to be constructed in the future due to higher costs than natural gas-fired units and some renewable energy resources, as well as uncertainty regarding future regulations to address carbon pollution. Thus, the rule is projected to impose no notable compliance costs.<sup>20</sup> The few new coal-fired projects that are currently being considered or constructed have substantially higher per-kilowatt electricity costs than natural gas-fired units, but some utilities may prefer coal based on considerations of energy and fuel diversity, as well as concerns about future higher natural gas prices.<sup>21</sup> Second, there is substantial potential to use the captured CO<sub>2</sub> for enhanced oil recovery (EOR), which considerably lowers the costs. Third, requiring partial CCS instead of full CCS, which would require capture rates of around 90%, further substantially lowers costs. And finally, based on the projected costs of the electricity produced, partial CCS is competitive with new nuclear power and biomass power, even without EOR.<sup>22</sup>

In this report, the majority cites to testimony from Dr. Julio Friedmann, Deputy Assistant Secretary for Clean Coal, U.S. Department of Energy (DOE), at a February 11, 2014, hearing before the Subcommittee on Oversight and Investigations, stating that the cost of first generation CCS technology “looks something like a 70 or 80 percent increase on the wholesale price of electricity.”<sup>23</sup> Dr. Friedman further stated that actual retail costs for consumers will vary by market, and he explained that the percentage increase is substantial because the current price of coal is so low, such that even a small numeric increase represents a substantial percentage of the small initial number. In addition, he noted that this estimate is for full capture and costs are “much less” for partial capture (which is what EPA has proposed to require). Finally, he pointed out that companies can sell CO<sub>2</sub> for enhanced oil recovery, which can recover almost half of these costs, and that costs are expected to drop by half for second generation technology.<sup>24</sup>

At the November 14, 2013, Energy and Power Subcommittee hearing, Dr. Sue Tierney, Managing Principal of The Analysis Group, testified that uncertainty in carbon regulation has made new investments in coal-fired power plants risky, while simultaneously making it difficult for utilities to gain regulatory approval for the CCS projects needed to reduce their carbon pollution. She testified that EPA’s proposed performance standards for new coal-fired power plants are needed to provide regulatory certainty for coal and CCS to move forward and that EPA’s proposed standards will create “a positive investment environment at a time when the

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to the House Energy and Commerce Committee’s Letter on the Energy Policy Act of 2005 and Carbon Capture and Storage Technology (Dec. 5, 2013) (online at [blogs.edf.org/climate411/files/2013/12/Response-to-House-Committee-Letter-on-EPAAct.pdf](https://blogs.edf.org/climate411/files/2013/12/Response-to-House-Committee-Letter-on-EPAAct.pdf)).

<sup>20</sup> U.S. Environmental Protection Agency, GHG Performance Standards NPRM, at 1496.

<sup>21</sup> *Id.* at 1475.

<sup>22</sup> *Id.* at 1475–1477.

<sup>23</sup> House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, statement of Dr. Julio Friedmann, Deputy Assistant Secretary for Clean Coal, U.S. Department of Energy, Hearing on Department of Energy Oversight: Status of Clean Coal Programs, 113th Cong. (Feb. 11, 2014).

<sup>24</sup> *Id.*

nation stands to spend up to a trillion dollars on new generating capacity in parts of the country.”<sup>25</sup>

## 2. Status of CCS technology

In the proposed rule, EPA notes that each step of the CCS process—CO<sub>2</sub> capture, compression and transportation, and storage—is feasible and has been demonstrated. Technologies to capture CO<sub>2</sub> from industrial gas streams have been around since the 1930s, and the technologies needed to capture CO<sub>2</sub> from coal-fired power generation are all technologically feasible.<sup>26</sup> The U.S. has transported CO<sub>2</sub> by pipeline for nearly 40 years and currently has 3,600 miles of existing pipelines that transport more than 50 million metric tons of CO<sub>2</sub> per year.<sup>27</sup> CO<sub>2</sub> storage, too, is both technologically feasible and demonstrated.<sup>28</sup> EPA cites research that 95% of the 500 largest CO<sub>2</sub> point sources in the U.S. are within 50 miles of a possible geological storage site,<sup>29</sup> while the U.S. Geological Survey recently estimated that the U.S. could store 500 times the country’s annual energy-related CO<sub>2</sub> emissions underground.<sup>30</sup> CO<sub>2</sub> has been injected underground for more than 40 years in the U.S. for the purpose of EOR,<sup>31</sup> including EOR activities in the Permian Basin from 1972 to 2005 that resulted in net storage of 55 million metric tons of CO<sub>2</sub> underground.<sup>32</sup> CO<sub>2</sub> storage has also been demonstrated at non-EOR sites.<sup>33</sup>

In the power sector, CCS has been demonstrated at pilot-scale at coal-fired power plants in the U.S. and abroad, including American Electric Power’s Mountaineer Plant in West Virginia and Southern Company’s Alabama Power Plant Barry.<sup>34</sup> These technologies are now being brought to commercial-scale. The first commercial-scale coal-fired CCS projects in North America are expected to begin operating in 2014, and include Southern Company’s 582 MW IGCC Kemper County Energy Facility in Mississippi, which will capture 65% of its CO<sub>2</sub> emissions for EOR, and SaskPower’s 110 MW Boundary Dam Project in Saskatchewan, Canada, which will capture 90% of its CO<sub>2</sub> emissions.<sup>35</sup> Other commercial-scale CCS projects being developed in the U.S. include the 400 MW IGCC Texas Clean Energy Project, the 300 MW IGCC Hydrogen Energy California project, and the Future Gen 2.0 project in Illinois.<sup>36</sup>

At a February 11, 2014 hearing before the Subcommittee on Oversight and Investigations, Dr. Julio Friedmann stated unambiguously: “this first generation CCS technology is commercially available today. You can call up a number of U.S. and international manufacturers, and they will sell you a unit at a large scale for

<sup>25</sup>House Committee on Energy and Commerce, Subcommittee on Energy and Power, statement of Dr. Sue Tierney, Managing Principal, The Analysis Group, *Hearing on EPA’s Proposed GHG Standards for New Power Plants and H.R. \_\_\_\_\_*, Whitfield-Manchin Legislation, 113th Cong. (Nov. 14, 2013).

<sup>26</sup>U.S. Environmental Protection Agency, *GHG Performance Standards NPRM*, at 1471–1472.

<sup>27</sup>*Id.* at 1472.

<sup>28</sup>*Id.* at 1472–1474.

<sup>29</sup>*Id.* at 1472.

<sup>30</sup>*Id.* at 1473.

<sup>31</sup>*Id.*

<sup>32</sup>*Id.* at 1472.

<sup>33</sup>*Id.* at 1472–1473, 1475.

<sup>34</sup>*Id.* at 1474–1475.

<sup>35</sup>*Id.* at 1475.

<sup>36</sup>*Id.* at 1435, 1475, 1479.

capture of more than a million tons per year.”<sup>37</sup> He added that a number of these companies now offer performance guarantees.

### 3. *Similar regulatory requirements in states and other countries*

EPA’s proposed CO<sub>2</sub> standards for new power plants are similar to standards already adopted by the states of California, Oregon, Montana, New York, and Washington. California and Oregon require new coal-fired power plants to meet a 1,100 lbs CO<sub>2</sub>/MWh emission standard,<sup>38</sup> the same level EPA proposes. New York and Washington limit power plant emissions to 925 and 970 lbs CO<sub>2</sub>/MWh, respectively, which will require new coal-fired power plants to capture and store even more of their CO<sub>2</sub> than under EPA’s proposal.<sup>39</sup> Finally, Montana has adopted a standard requiring new coal-fired power plants to capture and store at least 50% of their CO<sub>2</sub> emissions, similar to EPA’s proposed standard.<sup>40</sup>

EPA’s proposed standards are also consistent with efforts in other countries. Canada has adopted an emission standard of 926 lbs CO<sub>2</sub>/MWh for new coal-fired power plants,<sup>41</sup> while the United Kingdom has adopted an emission standard of 992 lbs CO<sub>2</sub>/MWh for all new fossil fuel-fired power plants.<sup>42</sup> Both standards will require new coal plants to use partial CCS.

### C. *EPA’s upcoming proposal on existing sources*

President Obama’s June 25, 2013, memorandum directed EPA to launch the effort to develop carbon pollution requirements for existing power plants “through direct engagement with States, . . . leaders in the power sector, labor leaders, non-governmental organizations, other experts, tribal officials, other stakeholders, and members of the public.”<sup>43</sup> The memorandum also directed EPA to tailor the requirements to reduce costs and encourage the use of market-based instruments, performance standards, and other regulatory flexibilities.<sup>44</sup>

EPA is in the process of developing a proposal for existing power plants to meet the President’s June 2014 deadline. In October and November of 2013, EPA held eleven listening sessions across the country, which took place at each EPA regional office and EPA headquarters.<sup>45</sup> The purpose was “to solicit ideas and input from the public and stakeholders about the best Clean Air Act ap-

<sup>37</sup> House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, statement of Dr. Julio Friedmann, Deputy Assistant Secretary for Clean Coal, U.S. Department of Energy, *Hearing on Department of Energy Oversight: Status of Clean Coal Programs*, 113th Cong. (Feb. 11, 2014).

<sup>38</sup> CAL. CODE REGS. tit. 20 2902 (2007); OR. REV. STAT. 757.524 (2009).

<sup>39</sup> N.Y. COMP. CODES R. & REGS. tit. 6, 251.3; WASH. REV. CODE 80.80.040 (2011); WASH. ADMIN. CODE 194-26-020 (2013).

<sup>40</sup> MONT. CODE ANN. 69-8-421(8) (2007).

<sup>41</sup> Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations (Canadian Environmental Protection Act) SOR/2012-167 (Can.) (online at [www.gazette.gc.ca/rp-pr/p2/2012/2012-09-12/html/sor-dors167-eng.html#archived](http://www.gazette.gc.ca/rp-pr/p2/2012/2012-09-12/html/sor-dors167-eng.html#archived)).

<sup>42</sup> Energy Act, 2013, c. 32, 57 (U.K.) (online at [legislation.gov.uk/ukpga/2013/32/pdfs/ukpga-20130032-en.pdf](http://legislation.gov.uk/ukpga/2013/32/pdfs/ukpga-20130032-en.pdf)).

<sup>43</sup> President Barack Obama, Presidential Memorandum—Power Sector Carbon Pollution Standards (Jun. 25, 2013) (online at [www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards](http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards)).

<sup>44</sup> *Id.*

<sup>45</sup> U.S. Environmental Protection Agency, Carbon Pollution Standards; Public Listening Sessions (online at [www2.epa.gov/carbon-pollution-standards/public-listening-sessions](http://www2.epa.gov/carbon-pollution-standards/public-listening-sessions)).

proaches to reducing carbon pollution from existing power plants.”<sup>46</sup>

### III. SECTION-BY-SECTION ANALYSIS OF H.R. 3826

H.R. 3826, as reported by the majority, would effectively eliminate EPA’s existing Clean Air Act section 111 authority with respect to coal-fired power plants.

#### A. Section 2

Section 2 of this bill prohibits the EPA Administrator from issuing, implementing, or enforcing any rule under section 111 of the Clean Air Act establishing greenhouse gas (GHG) emission standards for new fossil fuel-fired electric utility generating units unless specified conditions are met. EPA must set separate standards for coal and natural gas units and for units burning lignite coal. Additionally, no standard may be established for new coal-fired units unless the standard has already been achieved for twelve continuous months by at least six U.S. generating units, which are located at different generating stations, collectively represent the operating characteristics of electric generation at different locations in the U.S., and are each operated for the entire 12-month period on a commercial basis. Section 2 establishes the same emissions standard requirements for new units burning lignite coal, but requires that the standard has been met by three U.S. generating units rather than the six required for non-lignite coal.

In establishing emission standards for lignite and non-lignite coal-fired units, section 2 prohibits the EPA Administrator from relying on the results of demonstration projects. Section 5 of this bill defines a demonstration project as any “project to test or demonstrate the feasibility of carbon capture and storage technologies that has received government funding or financial assistance.” The term “government funding or financial assistance” is not further defined.

During the full committee markup, Representative John Yarmuth introduced an amendment to strike and replace section 2 with a federal funding mechanism that would allow EPA’s proposed new source standards to move forward, but help offset utilities’ CCS costs. This amendment was defeated by a vote of 16 to 30. Representative Lois Capps introduced an amendment during the full committee markup to allow EPA to count pollution control technologies used in other countries toward the 6-unit and 3-unit requirements for coal and lignite coal. This amendment was defeated by a vote of 18 to 26. Representative Jerry McNerney introduced an amendment during the full committee markup to strike the clauses prohibiting EPA from considering demonstration projects. This amendment was defeated on a voice vote.

#### B. Section 3

Section 3 of this bill prevents EPA from establishing any GHG emission standard for modified, reconstructed, or existing fossil

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<sup>46</sup>*Id.*

fuel-fired generating units unless Congress passes a new federal law to implement the standard.

#### C. Section 4

Section 4 of this bill nullifies all proposed or final EPA rules and guidelines issued prior to enactment of this bill that propose or set GHG emissions standards for fossil fuel-fired generating units.

Ranking Member Henry Waxman introduced an amendment in the subcommittee and full committee markups to provide that this bill would only take effect once another Federal program, other than section 111 of the Clean Air Act, has been identified that will reduce carbon pollution in at least equivalent quantities and with similar timing to the reductions required under the EPA rules and guidelines nullified under section 4. This amendment was defeated in full committee by a vote of 18 to 28. Representative Jan Schakowsky introduced an amendment in full committee markup that would have made no changes to this bill other than to accept EPA's scientific finding under the proposed new source rule that "[g]reenhouse gas (GHG) pollution threatens the American public's health and welfare by contributing to long-lasting changes in our climate that can have a range of negative effects on human health and the environment." This amendment was defeated in full committee on a party line vote of 20 to 24. All Republican members present during the vote rejected this scientific statement by voting against the amendment. All Democratic members present voted to accept the science and the amendment.

#### IV. POTENTIAL IMPACT OF H.R. 3826

This bill raises several major issues, and would effectively prevent EPA from requiring coal-fired power plants to control carbon pollution to any significant degree under existing law. At the November 14, 2013, Energy and Power Subcommittee hearing on this bill, David Hawkins, Director of Climate Programs at the Natural Resources Defense Council, testified that this bill would "render useless" the Clean Air Act provisions needed to curb carbon pollution from fossil fuel-fired power plants, the nation's largest source of this pollution.<sup>47</sup>

##### A. *This bill sets conditions for regulating new coal-fired power plants that will never be met, ensuring that carbon pollution remains uncontrolled*

This bill would reverse decades of Clean Air Act precedent and practice by barring EPA from requiring new coal-fired power plants to install pollution controls unless such controls have already been broadly adopted by the power sector without any government financial assistance in any form. The bill turns the rationale for government regulation of pollution on its head. Economists view pollution as a classic "market failure," in which every firm has an incentive to pollute, even though the combined effects of such pollution make society as a whole worse off. Controlling pollution reduces

<sup>47</sup> House Committee on Energy and Commerce, Subcommittee on Energy and Power, statement of David Hawkins, Director of Climate Programs, Natural Resources Defense Council, Hearing on EPA's Proposed GHG Standards for New Power Plants and H.R. \_\_\_\_\_, Whitfield-Manchin Legislation, 113th Cong. (Nov. 14, 2013).

firms' profits, or at best diverts resources that otherwise could be more profitably deployed. Thus, as a general matter, competitive firms do not control their pollution absent non-market incentives, such as government regulation or financial assistance.

And yet this bill would bar EPA from establishing a standard for carbon pollution from coal-fired power plants until such standard has been met voluntarily, without any EPA mandate, by at least six plants, which represent "the operating characteristics of electric generation at different locations in the United States." This bill would further bar EPA from setting any standard for lignite coal-fired plants that has not already been met voluntarily by at least three U.S. plants. Furthermore, none of these three or six plants can have "received government funding or financial assistance," a phrase so broad that it may well preclude plants that receive local tax breaks or take advantage of any federal tax incentives for things such as interest deductions, accelerated depreciation, and tax-exempt financing. With these restrictions, it is highly unlikely that a standard requiring substantial reductions in carbon pollution from new coal-fired power plants could ever be adopted by EPA under this bill. In fact, it appears that EPA could not even require new coal plants to control pollution to the levels achieved by the state of the art conventional coal-fired power plants, termed "ultra-supercritical" plants. This technology is now commonly used in China, but there is only one ultra-supercritical plant in the United States.

*B. This bill also ensures that carbon pollution from existing coal-fired power plants will remain uncontrolled by requiring enactment of a new federal law before EPA can address these emissions*

For existing coal-fired power plants, this bill's requirement that a new federal law be enacted before any carbon pollution standard can become effective, as a practical matter, blocks the adoption of any such standard under existing law.

EPA Acting Assistant Administrator Janet McCabe testified at the November 14, 2013, Energy and Power Subcommittee hearing that this bill's requirements are contrary to the longstanding Clean Air Act approach used to require industry to adopt new pollution controls such as scrubbers, which have improved public health for millions of Americans and were not in widespread use before EPA required them. She further testified that this bill would not provide an effective and workable approach to regulating carbon pollution from coal-fired power plants.<sup>48</sup>

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<sup>48</sup>House Committee on Energy and Commerce, Subcommittee on Energy and Power, statement of Janet McCabe, Acting Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, Hearing on EPA's Proposed GHG Standards for New Power Plants and H.R. \_\_\_\_\_, Whitfield-Manchin Legislation, 113th Cong. (Nov. 14, 2013).

For the reasons stated above, we dissent from the views contained in the Committee's report.

Sincerely,

HENRY A. WAXMAN,  
*Ranking Member.*

BOBBY L. RUSH,  
*Ranking Member, Sub-*  
*committee on Energy and*  
*Power.*

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