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1st Session } { 114–171

RATEPAYER PROTECTION ACT OF 2015

JUNE 19, 2015.—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. 2042]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2042) 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, 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. 2042, the "Ratepayer Protection Act," was introduced by Rep. Ed Whitfield (R–KY) on April 28, 2015, together with Rep. Sanford Bishop (D–GA), Rep. Morgan Griffith (R–VA), and Rep. Collin Peterson (D–MN). The legislation addresses the Environmental Protection Agency's (EPA) pending carbon dioxide regulations for existing fossil fuel-fired electric utility generating units under section 111(d) of the Clean Air Act (CAA). Key provisions of H.R. 2042 include the following:

- The bill would extend the compliance dates for any final regulation to allow for completion of judicial review before States or other affected entities would be required to comply with the rule.
- The bill also would provide that a State would not be required to implement a state or Federal plan under any final rule if the State's Governor determined it would have a significant adverse effect on electricity ratepayers or reliability.

BACKGROUND AND NEED FOR LEGISLATION

EPA's proposed carbon dioxide (CO2) rule for existing fossil fuel-fired power plants, also referred to by the agency as its "Clean Power Plan" or "111(d) Rule," was announced in June 2014.[1] The rule is being advanced pursuant to the President's Climate Action Plan and a Presidential Memorandum issued on June 25, 2013.[2] EPA plans to finalize the rule later this summer.

The EPA's proposal is unprecedented in the history of the agency. In the rule, EPA asserts authority under a rarely invoked provision of the CAA, known as section 111(d), to set mandatory CO2 "goals" for each State's power sector.[3] 79 Fed. Reg. 34830. For each State, EPA specifically proposes a unique "interim goal" for the period 2020 to 2029, and a "final goal" beginning in 2030.[4] *Id.* at 34957–34958. While EPA describes the rule as "flexible," the "goals" would be fixed and could not be changed. *Id.* at 34835.

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[1] The proposed rule, which is entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," was published in the Federal Register on June 18, 2014. *See* 79 Fed. Reg. 34830 (June 18, 2014). The proposal does not apply to Vermont, the District of Columbia, tribal lands, or U.S. territories. *Id.* at 34895, n. 258. On October 8, 2014, EPA announced a supplemental proposed rule for Indian Country and U.S. territories. *See* 79 Fed. Reg. 65482 (Nov. 4, 2014).

[2] The President's Climate Action Plan issued in June 2013 is available at *https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf.* The Presidential Memorandum is available at *https://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards.*

[3] The mandatory "goals" derived by EPA for each State are based on four "building block" measures including: (1) making heat rate improvements at coal-fired power plants, which EPA assumes for each State could result on average in a six percent CO2 emissions reduction from the affected units; (2) shifting away from coal-fired generation and operating the State's natural gas combined cycle plants at a seventy percent capacity factor; (3) shifting away from coal-fired generation and expanding use of existing nuclear and renewable energy generation; and (4) reducing the use of electricity through energy efficiency programs that EPA assumes for each State could improve electricity savings by up to 1.5 percent annually. 79 Fed. Reg. 34830, 34855–34892.

[4] EPA describes these as "rate-based goals." 79 Fed. Reg. at 34837. As an alternative, EPA also has proposed that a State could convert its assigned "rate-based goals" into an equivalent "mass-based goal." *Id.* at 34953; *see also* 79 Fed. Reg. 67406 (Nov. 13, 2014).

To comply, States would be required to submit plans to EPA for approval. 79 Fed. Reg. 34951–34954. EPA directs States to consider including in their plans a "mix of strategies" and programs such as:

> Demand-side energy efficiency programs; Renewable energy standards; Efficiency improvements at plants; Dispatch changes; Co-firing or switching to natural gas; Construction of new Natural Gas Combined-Cycle plants; Transmission efficiency improvements; Energy storage technology; Retirements; Expanding renewables like wind and solar; Expanding nuclear; Market-based trading programs; Energy conservation programs [5]

Under the rule, State plans would be due within only thirteen months of a final rule, with a possible 1-year extension for individual State plans and 2-year extension for plans that include a multi-State approach. 79 Fed. Reg. at 34951–53. Once approved, the plan would become federally enforceable and could not be revised without approval from the EPA Administrator. *Id.* at 34844, 34954.

If a State fails to submit a plan, or EPA finds a submitted plan unsatisfactory, the agency would impose a Federal plan, a model of which EPA has announced it will propose this summer and finalize in the summer of 2016. 79 Fed. Reg. at 34954. EPA has indicated the Federal plan would apply directly to electric utility generating units in States that do not develop a sufficient State plan.[6]

While EPA projects that nationwide by 2030 this rule would achieve CO2 emission reductions from the power sector of approximately 30 percent from CO2 levels in 2005 (*see* 79 Fed. Reg. 34832), the EPA used 2012 data to determine State goals. 79 Fed. Reg. at 34895–34896. The EPA does not project that these reductions would have any measurable impact on global temperatures, sea rise levels, or other climate indicators.[7] Also, based on Energy Information Administration (EIA) estimates, the emissions reduc-

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[5] *See http://cleanpowerplanmaps.epa.gov/CleanPowerPlan/*. EPA also encourages States to consider cap-and-trade programs. *See e.g.*, 79 Fed. Reg. at 34834, 34848, 34880, 34900.

[6] *See* EPA Notice Regarding "SPAR Panel #47: Federal Plan for Regulating Greenhouse Gas Emissions from Electric Generating Units" available at *http://www.epa.gov/rfa/cpp-federal-plan.html* ("The affected EGUs in the [S]tates that do not develop a sufficient [S]tate plan as part of the emission guidelines are the entities that will be subject to this rulemaking").

[7] In response to an Additional Question for the Record (QFR) following the June 19, 2014 hearing, EPA Acting Assistant Administrator McCabe stated that EPA did not model the impacts of the proposed rule on global temperatures or sea rise levels. *See* QFR Response available at *http://docs.house.gov/meetings/IF/IF03/20140619/102346/HHRG-113-IF03-Wstate-McCabeJ-20140619-SD003.pdf.* In the proposed 111(d) rule, EPA indicated that the CO2 reductions under this rule would be approximately half of the reductions under the 2012–2016 Light Duty Vehicle Rule and one-quarter of the reductions under the 2017–2025 Light Duty Vehicle rule for which EPA did model such impacts. In particular, EPA states in the proposed rule:

> Although the GHG emissions reductions projected for this proposal are large (the highest estimate is reductions of 555 MMT of CO2 in 2030—see Table 10 above), the EPA evaluated larger reductions in assessing this same issue in the context of the light duty vehicle GHG emission standards for model years 2012–2016 and 2017–2025. There the agency projected emission reductions roughly double and four times those projected here over the lifetimes of the model years in question.

[citation omitted].

For the 2012–2016 vehicle rule, EPA projected global mean temperature will be reduced by 0.006–0.015 °C and global mean sea level rise will be reduced by 0.06–0.14 cm by 2100 (*see* Regulatory Impact Analysis (RIA) at p. 7–124 available at *http://epa.gov/otaq/climate/regulations/420r10009.pdf).* For the 2017–2025 rule, EPA projected global mean temperature will be reduced by 0.0074—0.0176 °C and global mean sea level rise will be reduced by 0.071–0.159 cm by 2100 (*see* RIA at p. 6–115 available at *http://epa.gov/otaq/climate/documents/420r12016.pdf).*

tions in the United States would be offset by increased CO2 emissions abroad.[8]

The agency has received over 4.3 million comments on the proposed rule. According to a summary of comments submitted by States: "32 states made legal objections, 28 raised significant concerns regarding compliance costs and economic impacts, 32 warned of electricity reliability problems, and 34 states objected to EPA's rushed regulatory timelines."[9] Electric utilities, as well as numerous national, regional, and State organizations or other entities have also raised broad concerns relating to the rulemaking.[10]

Potential legal challenges

EPA's rule is widely viewed as raising significant legal issues and any final rule is expected to be challenged. There are numerous legal issues that have been raised, including threshold issues about whether EPA has authority at all to proceed with the rulemaking under section 111(d) of the CAA.

In particular, section 111(d) has had only limited application and scope and has been applied to only a few emissions sources, primarily in the 1970s and 1980s.[11] President Obama, however, directed EPA to regulate greenhouse gas emissions from existing power plants under this provision.[12] EPA Acting Assistant Administrator Janet McCabe testified at a June 19, 2014 hearing before the Subcommittee on Energy and Power that the proposed rule "is completely within the four corners of 111(d)."

Despite this assertion, the express language of the CAA, as set forth in the U.S. Code, provides that EPA does not have the legal authority to regulate CO2 emissions from existing power plants under section 111(d). Specifically, section 111(d) excludes the regulation of any pollutant emitted from a source category that is being regulated under section 112 of the CAA. *See 42 U.S.C. § 7411(d)(A).*[13] Because EPA now regulates electric utility gener-

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[8] In the coming decades, more than two-thirds (sixty-nine percent) of the World's energy-related CO2 emissions will come from non-OECD countries according to EIA. *See* International Energy Outlook 2013 available at *http://www.eia.gov/forecasts/ieo/pdf/0484(2013).pdf.* According to the EIA, non-OECD countries' CO2 emissions are expected to grow to 120 percent above 2005 levels by 2040. *See* "EIA world carbon dioxide emissions by region, Reference case" available at *http://www.eia.gov/oiaf/aeo/tablebrowser/#release=IEO2013&subject=3-IEO2013&table=10-IEO2013&region=0-0&cases=Reference-d041117.*

[9] *See* U.S. Chamber of Commerce, Institute For 21st Century Energy, January 2015 *report*, at p. 3.

[10] These comments are available at *http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OAR-2013-0602.*

[11] Section 111(d) of the Clean Air Act authorizes the EPA Administrator to prescribe regulations establishing a procedure under which States submit to the Administrator a plan establishing standards of performance (also known as "Existing Source Performance Standards") for certain existing sources and certain air pollutants. *See 42 U.S.C. § 7411(d).* Over the past 40 years, the agency has regulated pollutants under CAA section 111(d) from only five source categories: phosphate fertilizer plants (1977) (fluorides), sulfuric acid plants (1977) (acid mist), Kraft pulp mills (1979) (total reduced sulfur), primary aluminum plants (1980) (fluorides), and municipal solid waste landfills (1996) (landfill gas). *See* 79 Fed. Reg. at 34844, n. 43. EPA has also regulated sewage sludge incinerators under section 111(d) in conjunction with CAA section 129. *Id.* at 34845, n. 44.

[12] *See Presidential Memorandum* dated June 25, 2013 available at *http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards.*

[13] Section 111(d)(A)(1) provides:

> (d) Standards of performance for existing sources; remaining useful life of source (1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section *7410* of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source 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 *7408(a)* of this title or emitted from a source category which is regulated under section *7412* of this title but (ii) to

ating units as sources under CAA section 112 pursuant to the agency's 2012 "Mercury and Air Toxics" rule,[14] this language prohibits EPA from setting standards for these sources of emissions under section 111(d).

EPA maintains that, notwithstanding the express language set forth in the U.S. Code, the agency "may reasonably construe the provision to authorize regulation of [greenhouse gases] under CAA section 111(d)." [15] EPA asserts its interpretation is permissible due to ambiguities that stem from "apparent drafting errors that occurred during enactment of the 1990 Clean Air Act Amendments, which revised section 111(d)." [16] Specifically, EPA contends that a conflicting Senate provision that remained in the legislation enacted by Congress creates ambiguities that allow for the current proposed regulation because the language appears to exclude only section 112 pollutants from regulation under section 111(d), not section 112 sources as provided in the U.S. Code referenced above. Although EPA notes the presence of this language appears to be a "drafting error," because both provisions are presented in the Statutes at Large [17] EPA argues that "[u]nder these circumstances, the EPA may reasonably construe the provision to authorize the regulation of GHGs under CAA section 111(d)." [18]

Despite EPA's position, the evidence indicates Congress intended the language in the U.S. Code to be the law. Committee staff has reviewed the legislative history relating to the 1990 Amendments to the CAA. The legislative history shows (a) the provisions of section 111(d) reflected in the U.S. Code originated as specific language proposed by the President in legislation formally submitted to Congress in the summer of 1989,[19] which was subsequently incorporated into legislation considered and passed by the House; (b) the Senate and House conferees considered and amended the section containing House statutory language providing that sources regulated under section 112 cannot be regulated as existing sources

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> which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

See § 42 U.S.C. 7411(d)(A).

[14] *See* National Emissions Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, 77 Fed. Reg. 9304 (Feb. 16, 2012).

[15] *See* 79 Fed. Reg. at 34853. Nevertheless, EPA notes that "the pertinent language [in the U.S. Code] in CAA section 111(d) would exclude the regulation of any pollutant which is 'emitted from a source category which is regulated under section 112.'" *Id.*

[16] *Id. See also* 70 Fed. Reg. 15994, 16031 (Mar. 29, 2005) ("While it appears that the Senate amendment to section 111(d) is a drafting error and therefore should not be considered, we must attempt to give effect to both the House and Senate Amendments as they are both part of the current law.").

[17] Although the provisions at issue occur some 100 pages apart in the Statutes at Large, they have been presented as bracketed text in statutory compilations used by EPA to show the apparent conflict, with CAA Section 111 (d)(1)(A) reading: ". . . establishes standards of performance for any existing source 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] [or 112(b)]. . . ." An accompanying footnote on the brackets states "The amendments, made by section 108(g) and 302(a) of P.L. 101–549, appear to be duplicative or conflicting; both, in different language, change the reference to section 112." *See http://legcounsel.house.gov/Comps/Clean%20Air%20Act.pdf.*

[18] *See* 79 Fed. Reg. at 334853.

[19] *See* Proposed Legislation "Clean Air Act Amendments of 1989," Message from the President and accompanying papers referred to the Committee on Energy and Commerce, at p. 112 of Committee print available at *http://docs.house.gov/meetings/IF/IF03/20140619/102346/HHRG-113-IF03-20140619-SD012.pdf.*

under section 111; and (c) the Senate expressly receded to the House with respect to these substantive provisions regarding section 111(d).

The Statement of Senate Managers states as follows:[20]

> SECTION 108—MISCELLANEOUS PROVISIONS. Senate bill. In section 103 of the Senate bill revises sections 108(e) and (f) of the Clean Air Act to require the Administrator and the Secretary of Transportation to update air quality/transportation planning guidance and to add to the transportation control measures to be evaluated by the Administrator after consultation, when appropriate, with the Secretary.
>
> **House amendment.** The House amendment contains a similar provision to the one in the Senate bill regarding amendments to section 108 of the Clean Air Act. **In addition, the House amendment contains provisions** for a technology clearinghouse to be established by the Administrator, **for amending section 111 of the Clean Air Act relating to new and existing sources,** for amending section 302 of the Clean Air Act which contains definitions, to provide a savings clause, to state that reports that are to be submitted to Congress are not subject to judicial review, and for other purposes.
>
> **Conference agreement. The Senate recedes to the House except that with respect to the requirement regarding judicial review of reports, the House recedes to the Senate, and with respect to transportation planning, the House recedes to the Senate with certain modifications.**

[Emphasis added][21]

By receding to the House language, the conferees effectively removed obsolete references to section 112(b)(1)(a) in the underlying CAA. The legislative history indicates further that the language in the Statutes at Large from the Senate-originated provision, a "conforming amendment," was essentially an editing oversight that inadvertently remained in the enacted statute.[22] This language was

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[20] The Statement of Managers accompanying the conference report was expressly described in the Congressional Record as an authoritative source of legislative intent. *See, e.g.,* November 2, 1990 Congressional Record, Statement by the Honorable Henry A. Waxman in the House of Representatives, Saturday, October 27, 1990 and available at *http://docs.house.gov/meetings/IF/IF03/20140619/102346/HHRG-113-IF03-20140619-SD013.pdf:*

> Mr. Speaker, as chairman of the Health and Environment Subcommittee of the Committee on Energy and Commerce, which is the subcommittee with legislative jurisdiction over the Clean Air Act Amendments of 1990, I wish to clarify the legislative history of the Clean Air Act Amendments of 1990.
>
> The clean air legislation (S. 1630) reflects a series of bipartisan compromises. These compromises are embodied primarily in the conference report on the clean air bill (S. 1630) and the statement of managers accompanying the conference report. To the extent that provisions in the conference report track provisions in the House-passed bill (H.R. 3030), the report of the Committee on Energy and Commerce is also an authoritative source of the legislative intent of the House. On the other hand, accurate legislative intent is not necessarily reflected in the commentary of individual House Members on S. 1630.

[21] *See* CHAFEE-BAUCUS STATEMENT OF SENATE MANAGERS, S. 1630, THE CLEAN AIR ACT AMENDMENTS OF 1990, *A Legislative History of the Clean Air Act Amendments of 1990,* William S. Hein & Co. Inc. (1998), Volume I, Book 2 at p. 885 (emphasis added). See excerpts available at *http://docs.house.gov/meetings/IF/IF03/20140619/102346/HHRG–113–IF03–20140619–SD011.pdf.*

[22] The Senate conforming language can be traced to Senate bill S. 816. Provisions of S. 816, introduced in the U.S. Senate on April 18, 1989, were subsequently incorporated into S. 1630,

not expressly considered by the conferees because such consideration was unnecessary. The language served as a technical correction, the point of which was to replace a statutory reference that had been rendered obsolete by amendments to section 112 with a reference that would accurately conform to the revised section 112. This technical edit inadvertently remained in the legislation taken up by Congress. Once the substantive House provisions were adopted, this technical edit was rendered non-executable because the reference it replaced no longer existed. Subsequent review by the authoritative Office of Law Revision Counsel [23] correctly identified this obsolete provision and corrected it in the U.S. Code.[24]

In short, based on review of the legislative history, it does not appear that this rulemaking falls within "the four corners of 111(d)." When corrected for technical drafting imperfections, as the U.S. Code revisions have done, EPA cannot regulate existing power plants under section 111(d) because these plants are already regulated as sources under section 112.

This threshold issue has already been raised in litigation in the U.S. Court of Appeals for the District of Columbia.[25] Even assuming that EPA has authority under section 111(d) to regulate existing power plants, there remain fundamental issues regarding the scope of such authority, including whether EPA can require actions "beyond-the-fence" of the electric generating units that are the subject of the regulation.[26] In particular, while the sources to be regulated under the proposal are limited to "existing fossil-fuel fired electric generating units," [27] EPA is seeking to set emissions limits

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the legislation that passed the Senate and became the vehicle for the Clean Air Act Amendments of 1990. Identical provisions were included in H.R. 2585, introduced in the U.S. House on June 8, 1989, which was subject along with a competing legislative proposal, H.R. 4, to legislative hearings by the Energy and Commerce Committee. See Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce House of Representatives, One Hundred First Congress, First Session entitled "June 22, 1989 TOXIC AIR POLLUTANTS—H.R. 4 and H.R. 2585, July 24, 2989 ADMINISTRATION'S AMENDMENTS," Serial No. 101–116. Neither H.R. 2585 nor H.R. 4 were reported out of Committee. Subsequently, H.R. 3030, which was introduced on July 27, 1989, specifically incorporated language proposed by the President that served to prohibit the application of section 111(d) to pollutants emitted from source categories regulated under section 112. See A Legislative History of the Clean Air Act Amendments of 1990, William S. Hein & Co. Inc. (1998), Volume II, Book 2 at pp. 3467–3468. The Committee eventually considered and reported favorably H.R. 3030, which was passed in the U.S. House and was then inserted in lieu of the Senate language as the House amendments to S. 1630. Id. at pp. 3430. See also, Volume II, Book 1 at page 3019.

[23] The Office of Law Revision Counsel is an independent, nonpartisan office in the U.S. House of Representatives under the authority of the Speaker of the House that prepares and conducts the codification process for the U.S. Code. While the Statutes at Large serve as legal evidence of laws (*1 U.S. C. § 112*), the subsequent codification process of the U.S. Code serves to correct technical errors in the law, eliminate obsolete provisions, and ultimately replaces, once enacted as positive law, the Statutes at Large as legal evidence of laws (*1 U.S. C. § 204* and *2 U.S. C. § 285b(1)*).

[24] The U.S. Code notes specifically that the amendment "could not be executed, because of the prior amendment by Pub. L. 101–549, § 108(g)," which contained the substantive House language.

[25] *See In Re Murray Energy Corporation,* U.S. Court of Appeals for the District of Columbia, Case No. 14–1112; *State of West Virginia* v. *United States Environmental Protection Agency,* U.S. Court of Appeals for the District of Columbia, Case No. 14–1146. While the Court issued on order on June 9, 2015, dismissing the legal challenges as premature, these issues are expected to be raised in legal challenges to any final rule.

[26] *See e.g.,* Letter of *15 Governors* available at *http://www.scribd.com/doc/239195664/Republican-Governors-Urge-President-Obama-to-Promote-Reliable-Affordable-Energy-Policy* ("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 [S]tate law."); *see also,* e.g., "EPA's Section 111(d) Carbon Rule: What if States Just Said No?" available at *http://www.insideronline.org/summary.cfm?id=23304* ("EPA has 'creatively' reinterpreted its Section 111 authority for adopting performance standards and, for the first time, has proposed standards based on 'outside-the-fence' actions.").

[27] *See* 79 Fed. Reg. at 34830.

that would not be achievable through emissions controls or other actions at the units subject to regulation.[28] Rather, to meet EPA's proposed emissions limits, States would need to undertake measures outside the boundaries of those units.

In addition to issues relating to regulating "beyond the fence," other questions relate to what legal authority the agency would have to include its various building blocks in a Federal implementation plan. There are also questions regarding the potential need for State or Federal implementing legislation, as well as the consistency of the Clean Power Plan's approach with State laws or pending legislation.[29] For example, a number of States have passed laws that provide that any CO2 performance standards established by the State for existing power plants be based on "inside the fence" measures and/or require State legislative approval of a plan.[30]

Other legal and regulatory issues include specific questions about how the regulation affects the jurisdiction of the Federal Energy Regulatory Commission (FERC) or jurisdictional issues under the Federal Power Act, how the rule affects States that have exclusive jurisdiction over intrastate electricity matters, as well as interstate compliance and enforcement issues, and other matters such as the implications of the proposal for cooperatives and municipal utilities over which States may have limited or no jurisdiction.

Legal questions raised by the proposed rule were addressed in testimony before the Committee's Subcommittee on Energy and Power from legal experts. For example, Laurence Tribe, the Carl M. Loeb University Professor and Professor of Constitutional Law at Harvard University, testified at a March 17, 2015 hearing that "EPA's proposal raises grave constitutional questions, exceeds EPA's statutory authority, and violates the Clean Air Act." He further testified:

> EPA possesses only the authority granted to it by Congress. It lacks "implied" or "inherent" powers. Its gambit here raises serious questions under the separation of powers, Article I, and Article III, because EPA is attempting to exercise lawmaking power that belongs to Congress and judicial power that belongs to the Federal courts. The absence of EPA legal authority in this case makes the Clean Power Plan, quite literally, a power grab.

He also testified:

> I taught the first environmental law course in this country, and I have won major victories for environmental causes, but I am committed to doing it within the law. And there is a legal way to address these problems. They tried to get cap and trade with this Administration, didn't work.

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[28] *See, e.g.* 79 Fed. Reg. at 34888–34889 (In response to concerns raised by stakeholders that EPA's authority is limited to measures that may be undertaken at the affected units, and does not include "beyond-the-unit" or "beyond-the-fenceline" measures, EPA states: "As discussed above, we propose that the provisions of CAA section 111 do not by their terms preclude the [best system of emissions reduction] from including [building blocks 2, 3 and 4]").

[29] *See e.g.* "EPA's CO2 Rule and 18 States' Resolutions and Legislation, EPA's Proposed CO2 Rule Collides with Flexibility Asserted By States," Raymond L. Gifford et al. (August 2014) available at *http://www.wbklaw.com/uploads/file/EPA's%20CO2%20Rules%20and%2018%20States'%20Resolutions%20and%20Legislation.pdf.*

[30] States that have passed legislation include Kansas, Kentucky, Louisiana, Missouri, Ohio, Pennsylvania, and West Virginia.

> And I guess the EPA is now following a kind of marching order saying, well, if you can't do it through the lawful way, just take an agency and tell it to bend and twist and tear and rip the law.

At the March 17, 2015 hearing, Ms. Allison Wood, a Clean Air Act lawyer also testified:

> Section 111(d) of the Clean Air Act has always been an insignificant provision designed to be used rarely. Indeed, it has been used only five times since 1970. EPA's proposed section 111(d) rule turns this notion on its head and seeks to regulate an enormous part of the economy. The rule suffers from numerous legal deficiencies, including whether EPA even has authority to issue it given that electric generating units are regulated under section 112 of the Clean Air Act. . . .
> . . . EPA proposes for the first time a standard of performance that is based on not operating the source. EPA claims for the first time, based on the dictionary definition of the word system, that it can regulate any set of things that leads to reduced emissions from the source category overall, even if those things go beyond the fence line of the plant.[31]

She further testified:

> To use an illustration that may help people better understand what EPA is proposing to do here, it is as if EPA were requiring car owners not only to have catalytic converters on their cars, but also to travel a certain amount of days per week by bus, purchase a certain number of electric vehicles, and work from home one day a week. All of these things would reduce overall car emissions, but they do nothing to reduce the rate at which those cars emit pollutants per mile, and most people would surely agree that the Clean Air Act would not allow EPA to require these types of things from car owners, yet, this type of regulation is exactly what EPA is trying to do to power plants in the Section 111(d) rule.

State regulators also highlighted legal concerns. For example, at the March 17, 2015 hearing, the Secretary of the North Carolina Department of Environment and Natural Resources, Donald van der Vaart, testified:

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[31] In EPA's FY 2016 budget documents submitted to Congress earlier this year, the agency noted that the proposed rule would go far beyond the EPA's traditional authority, stating:

> The breadth and uniqueness of the Clean Power Plan rulemakings will require that the agency devote significant resources to its implementation. Traditionally, the EPA's regulatory analysis would focus on only emitting sources and "end of pipe" controls. The existing power plant rule requires that the EPA look at the emission control strategies that many States and companies are currently employing that are either shifting generation away from higher emitting plants or reducing the need for generation in the first place (through energy efficiency). Evaluating and capturing these strategies requires the agency to tap into technical and policy expertise not traditionally needed in EPA regulatory development . . . and to understand and project system-wide approaches and trends in areas such as electricity transmission, distribution and storage.

See EPA Congressional Justification for FY 2016 Budget Request, at p.225, available at *http://www2.epa.gov/sites/production/files/20150902/documents/epa_fy_2016_congressional_justification.pdf*.

> There is universal agreement that the 111(d) rule will fundamentally restructure how energy is generated and consumed in America. I would argue that EPA's Section 111(d) rule is to energy what the Affordable Care Act is to healthcare. This fundamental change to America's electricity model will come at the hands of a rule that few consider legally firm. The EPA acknowledges in the rule that it is structured to survive even if portions of the rule are struck down. In my more than 20 years of implementing air quality rules, I am not aware of any rule where the EPA has made an *a priori* acknowledgement of legal infirmity.

Other regulators have also testified to the legal issues surrounding the rule.[32]

Potential impacts on electricity prices

The proposed rule has raised broad concerns among States, affected entities and other stakeholders because it would raise the price of electricity. EPA estimates annual costs of compliance over the next fifteen years would range from $5.5 billion and $7.5 billion in 2020 to $7.3 billion and $8.8 billion in 2030,[33] and that there would be "a [four] to [seven] percent increase in retail electricity prices, on average, across the contiguous U.S. in 2020," *Id.* at 34948. According to other estimates, the potential costs could be significantly higher, and could range from $366 billion to $479 billion over the period 2017–2031.[34]

At the April 14, 2015 hearing on a discussion draft of H.R. 2042, witnesses provided testimony indicating that costs of electricity could increase substantially for ratepayers in the majority of States during the fifteen year period in which the rule would be implemented. For example, Energy Economist and Attorney Eugene Trisko, who has assessed energy costs for households, projected that in thirty-one geographically-diverse States electricity rates could be fifteen percent higher each year than they would be without the rule during the period 2017 through 2031. He testified:

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[32] *See, e.g.*, March 17, 2015 Testimony of Craig Butler, the Director of the Ohio Environmental Protection Agency ("[T]he proposal seeks to overhaul the Nation's power generation, transmission, distribution systems, by reducing coal-based electricity, and instituting federally-mandated reliance on energy efficiency, renewable energy under the guise of global climate protection. . . . It is no secret, as we have heard today, that many [S]tates including Ohio, that the Clean Power Plan is encumbered with significant legal problems and should not go forward."); *see also* September 9, 2014 Testimony of Henry R. Darwin, Director, Arizona Department of Environmental Quality ("I do not believe the Clean Air Act provides EPA with the authority to regulate greenhouse gases as it proposes to do so in its Clean Power Rule.").

[33] *See* 79 Fed. Reg. at 34934–34935.

[34] *See, e.g.*, NERA Economic Consulting report entitled "Potential Energy Impacts of the EPA Proposed Clean Power Plan," October 2014 available at *http://www.nera.com/content/dam/nera/publications/2014/NERA_ACCCE_CPP_Final_10.17.2014.pdf.* With respect to costs, the North American Electric Reliability Corporation (NERC), which collects energy efficiency program data, also has concluded that EPA has overstated efficiency savings. *See* NERC Report entitled "Potential Reliability Impacts of EPA's Proposed Clean Power Plan, Initial Reliability Review," November 2014 available at *http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCUQFjAB&url=http%3A%2F%2Fwww.nerc.com%2Fpa%2FRAPA%2Fra%2FReliability%2520Assessments%2520DL%2FPotential_Reliability_Impacts_of_EPA_Proposed_CPP—Final.pdf&ei=ep2BVaGuIcjksAWRjqW4BA&usg=AFQjCNFkuP7LTMVQjCdrwchQ-vpaq1ij7Q&sig2=UBZ3AC1spN9fOlef3o17Aw&bvm=bv.96041959,d.b2w* NERC stated: "NERC, EIA, EPRI, and various utilities, have published reports, analysis, and forecasts for energy efficiency that do not align with the CPP's assumed declining demand trend." Further, NERC stated that "[t]he CPP assumption appears to underestimate costs and does not reflect the capital investments that would otherwise be required by utilities to meet growing electricity demand or energy efficiency program implementation."

"These average price increases mean that electricity prices for consumers will be [fifteen percent] 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 [twenty-two percent] for the [thirty-one] states." The President of Industrial Consumers of America, Paul Cicio, also testified that with the Clean Power Plan, together with other rules, industrial customers could expect up to a 33.7 percent increase in electricity prices by 2025.

State officials also testified before the Subcommittee that the proposed rule could result in large rate increases in their individual States. For example, at the March 17, 2015 hearing, the Chairman of the Florida Public Service Commission, Art Graham, testified: "potential increases of [twenty-two to fifty percent] in some retail electric rates is a credible estimate of the level of Florida's Clean Power Plan costs." The Director of the Ohio EPA, Craig Butler, also testified: "One stunning statistic I will share with you is that the Public Utilities Commission of Ohio conducted a detailed analysis of the Clean Power Plan and predicted wholesale market energy prices to be 39 percent higher in calendar year 2025, costing Ohioans approximately $2.5 billion." Other State analyses also have underscored the potentially significant adverse effects on ratepayers in their individual States.[35]

Witnesses also testified that the costs of the rule would fall disproportionally on lower-income households. For example, at the hearing on the discussion draft of H.R. 2042, Mr. Trisko testified:

> 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.

He further testified that EPA envisions that consumers will spend $560 billion on energy efficiency.[36] Such investments, he testified, are unlikely to be made by lower-income households, stating: "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."

Witnesses also raised concerns that EPA has significantly understated the costs to the extent the agency has failed to account for the significant stranded costs associated with compliance with the rule. For example, Lisa Johnson, CEO and General Manager of

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[35] *See e.g., Kansas Corporation Commission* Comment ("The KCC estimates a base case that the EPA's CPP as proposed would cost the [S]tate of Kansas $8.75 billion with a possible range of costs between $5 billion and $15 billion. The corresponding increase in rates is between [ten percent] and [thirty percent] over [thirteen] years. . . ."); *Virginia State Corporation Commission* Comment (noting that:

> the incremental cost of compliance for one utility alone (Dominion Virginia Power) would likely be between $5.5 billion and $6.0 billion on a net present value basis. . . . 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).

[36] Mr. Trisko testified:

Seminole Electric Cooperative, Inc., testified that its 1,300 megawatt Seminole Generating Station (SGS), in which over $530 million in state-of-the-art environmental control technology have been invested, would be forced to retire over twenty years before the end of its remaining life. She testified:

> 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.

In addition to questions about the compliance costs, commenters on the rule also have raised questions relating to the climate related benefits. While EPA maintains there will be climate benefits based on "social cost of carbon" estimates,[37] on February 26, 2015, Senior Vice President of NERA Economic Consulting, Anne Smith testified before the House Committee on Oversight and Government Reform that EPA's presentation of its benefits estimate was overstated and misleading: "When correctly presented, USEPA's estimates indicate the present value of CPP spending through 2030 will exceed $180 billion while the climate benefits are not expected to exceed that cost until about 100 to 125 years after the spending has been sunk." [38] Further, she noted that the agency's estimates of the benefits relate to global rather than domestic benefits, and testified: "The CPP's estimated benefits to U.S. populations is not expected to exceed the CPP's costs under even the most pessimistic projections of climate impacts." [39]

Potential impacts on electric reliability

In addition to impacts relating to the high costs of the rule, there are significant concerns about the rule's potential impact on reliability because the effect of the regulation would be to shut down a significant amount of the nation's existing coal-fired electricity generation.[40] EPA projects that up to fifty gigawatts (GW) of addi-

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> 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.

He further testified:

> 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 seven to eight 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 seven to eight 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.

[37] *See, e.g.*, 79 Fed. Reg. at 34839–34840.

[38] *See* Testimony of Anne E. Smith, Ph.D. available at *http://oversight.house.gov/wp-content/uploads/2015/02/ASmith-Oversight-Committee-Testimony-2-2-15.pdf*.

[39] *Id.*

[40] EIA reports that in 2014, energy sources and the percentage share of total electricity generating were as follows: Coal thirty-nine percent; Natural Gas twenty-seven percent; Nuclear nine-

tional coal-fired generation may become uneconomic by 2030, with the vast majority retiring by 2020. EPA specifically estimates that in 2020, the amount of additional coal-fired generation that may be removed from operation would represent nineteen percent of all coal-fired capacity (and 4.6 percent of total generation capacity in 2020). 79 Fed. Reg. at 34935. The EIA has also projected that approximately fifty GW of coal-fired generation would retire under the Clean Power Plan, nearly all by 2020, which would be over and above the approximately forty GW EIA currently projects will retire (most before 2017).[41]

Concerns relating to electric reliability were raised in testimony before the Committee, including FERC Commissioners and State regulators from Arizona, Florida, Indiana, Montana, North Carolina, Ohio, and Texas.[42] The North American Electric Reliability Corporation (NERC), which develops and enforces electric reliability standards, has also released two reports to date that identify concerns regarding bulk power system reliability risks associated with the proposed rule.[43]

Reliability concerns were also underscored during conferences before the FERC. In particular, FERC convened four technical conferences focused on EPA's proposed rule and issues related to electric reliability, wholesale electric markets, and operations, and energy infrastructure. These conferences on *February 19, 2015* and *March 11, 2015* in Washington, DC, *February 25, 2015* in Denver, and *March 31, 2015* in St. Louis, included numerous submitted oral and written testimony that raised concerns relating to the Clean Power Plan.

Need for legislation

While there are numerous legal, cost, and reliability issues associated with EPA's proposed 111(d) rule, submittal of State plans would be required before the legality of the rule would be established. The Secretary of the North Carolina Department of Envi-

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teen percent; Hydropower six percent; Other Renewable seven percent, including Biomass (1.7 percent), Geothermal (0.4 percent), Solar (0.4 percent), Wind (4.4 percent); Petroleum one percent; and Other Gases < one percent. *See http://www.eia.gov/tools/faqs/faq.cfm?id=427&t=3.*

[41] *See* EIA Analysis of the Impacts of the Clean Power Plan dated May 26, 2015 available at *http://www.eia.gov/analysis/requests/powerplants/cleanplan/pdf/powerplant.pdf*, at p. 16. In August 2014, the Government Accountability Office (GAO) estimated that over forty-two GW "has either been retired since 2012 or is planned for retirement by 2025." *See* GAO Report entitled "*EPA Regulations and Electricity: Update on Agencies' Monitoring Efforts and Coal-Fueled Generating Unit Retirements*," August 2014, available at *http://www.gao.gov/assets/670/665325.pdf*.

[42] *See* September 9, 2014 Testimony of Kenneth W. Anderson, Jr., Commissioner, Public Utility Commission of Texas; Travis Kavulla, Commissioner, Montana Public Service Commission; Henry R. Darwin, Director, Arizona Department of Environmental Quality; Thomas W. Easterly, Commissioner, Indiana Department of Environmental Management; March 17, 2015 Testimony of Art Graham, Chairman, Florida Public Service Commission; Craig Butler, Director, Ohio Environmental Protection Agency; and Donald van der Vaart, Secretary, North Carolina Department of Environment and Natural Resources.

[43] *See* "Potential Reliability Impacts of EPA's Proposed Clean Power Plan, Initial Reliability Review, November 2014" and is available at *http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential_Reliability_Impacts_of_EPA_Proposed_CPP_Final.pdf*; *see also* "Potential Reliability Impacts of EPA's Proposed Clean Power Plan, Phase I, April 2015" available at *http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential%20Reliability%20Impacts%20of%20EPA%E2%80%99s%20Proposed%20Clean%20Power%20Plan%20-%20Phase%20I.pdf*. NERC is the electric reliability organization (ERO) for North America, subject to oversight by FERC and governmental authorities in Canada. On November 12, 2014, NERC also released a long-term reliability assessment that raised similar concerns relating to the "Clean Power Plan." *http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%*20DL/2014LTRA.PDF; *see also Announcement* available at *http://www.nerc.com/news/Headlines%20DL/LTRA%2012NOV14_*FINAL.pdf.

ronment and Natural Resources testified at the March 17, 2015 hearing:

> Given the certain litigation that will ensue if the proposed rule under 111(d) is promulgated, states such as North Carolina are at risk of investing unnecessary time and resources, developing and enacting state 111(d) plans prior to the resolution of litigation. North Carolina recommends that the EPA amend the rule's submittal deadline to require states to submit a 111(d) plan only after the conclusion of the judicial review process. Traditionally, when the EPA promulgates a new rule that sets forth requirements designed to address some aspect of the Clean Air Act, each state must take action, usually in the form of legislation and rulemaking, to avoid sanctions directly or avoid sanctions on its sources. The state then submits a demonstration to the EPA for approval, which can take anywhere from a few months to many years, during which time the states implement their rules. If the rule is struck down, however, the state is forced to uproot its earlier work and begin a new planning process; legislation, rulemaking, implementation and enforcement, and the process must often be amended again when EPA revises its illegal rule in an attempt to satisfy the courts.

Other States have also urged EPA in comments that implementation of any final rule be stayed pending judicial review, including in the comments of seventeen State attorneys general, as well as in individual comments from the States of Alabama, Florida, and North Dakota.[44]

At the March 17, 2015 hearing, Ms. Wood also addressed the significant resources required to be expended, and testified:

> The plans that states will need to prepare are extremely complicated. In the *West Virginia* litigation, for example, the State of Alabama described preparation of the plan that will be needed for the section 111(d) rule as "the most complex air pollution rulemaking undertaken by [Alabama] in the last 40 years." [citation omitted] The rule essentially requires a complete overhaul of each state's energy portfolio. In addition, many states are going to have to enact laws and regulations to enable them to do the things contemplated by the proposed rule. All of this will be completed before litigation over the rule is complete. If the rule is ultimately held to be unlawful, the states will have already expended enormous amounts of resources to develop the plan, and any laws or regulations that have been enacted cannot be easily reversed.

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[44] *See, e.g. Comment* of 17 Attorneys General at p. 26 available at *http://www.ok.gov/oag/documents/EPA%20Comment%20Letter%20111d%2011-24-2014.pdf*; Alabama Dept. of Environmental Management *Comment* at p. 2 available at *http://www.csg.org/aapca_site/news/documents/AL11-21-2014EPASDBADEMCAA111dcomments.pdf*; North Dakota Dept. of Health *Comment* at p. 6 available at *http://www.csg.org/aapca_site/news/documents/NDDHComments12-1-14.pdf*; and Florida Dept. of Environmental Protection *Comment* at p. 3 available at *http://docs.house.gov/meetings/IF/IF03/20150414/103312/HHRG-114-IF03-20150414-SD005.pdf*.

What the legislation would do

The continued affordability and reliability of electricity supplies is critical to the nation's future economic growth, job creation, and to all American households and businesses. The bill includes the following provisions to protect States and ratepayers.

First, H.R. 2042 would extend the compliance dates of any final rule pending judicial review, including the dates for submission of State plans. The bill would extend the compliance dates for the period of time that begins sixty days after a final rule appears in the Federal Register, and would end when all final legal challenges filed during that period have been resolved, and are no longer subject to legal review. While the bill would extend compliance dates, nothing would prevent those States that wanted to move forward with implementation prior to the completion of judicial review from submitting plans or otherwise complying.

Second, H.R. 2042 also would provide a safe harbor for States to protect ratepayers in the event that the rule was upheld. In particular, the bill would provide that no State shall be required to implement a State or Federal plan that the State's governor determines, in consultation with other relevant State officials and taking into account rate increases associated with other Federal or State regulations, that it would have a significant adverse effect on (i) retail, commercial, or industrial ratepayers; or (ii) the reliability of the State's electricity system. In making such a determination, a Governor would be required to consult with the State's energy, environmental, public health, and economic development departments or agencies, as well as with NERC.

The extension of time provided in H.R. 2042 to allow for judicial review of a legally controversial and vulnerable rule is reasonable. EPA's accelerated schedule requiring submission of plans within thirteen months of a final rule is not mandated by statute and is unreasonable given the fundamental changes that EPA envisions States would commit to under its rule. At the same time, completion of judicial review typically requires approximately three years,[45] which is a relatively short period of time in the context of major EPA CAA rulemakings.[46] Allowing for completion of judicial review would ensure that States and other affected stakeholders would not have to undertake extensive planning and activities to comply with the rule's unprecedented requirements or to make other related and costly decisions that may not easily be reversed if the rule is struck down or modified.

At the same time, such a delay would have no adverse effect on the climate given the negligible impact of the rule's projected reductions in global greenhouse gas emissions. As a practical matter, U.S. energy-related carbon-dioxide emissions have declined and are expected to remain below 2005 levels in the coming decades. The

[45] In response to a QFR following the March 17, 2015 hearing, Allison Wood estimated that the time to complete judicial review likely ranges from approximately three years to three years and eight months, depending upon the nature of the Supreme Court's review. *See* QFR Response available at *http://docs.house.gov/meetings/IF/IF03/20150317/103073/HHRG-114-IF03-Wstate-WoodA-20150317-SD007.pdf.* She also stated that it was possible that the Supreme Court could return the case to the D.C. Circuit for further action. *Id.*

[46] The agency announced in December 2010 that it had entered into a settlement and would propose and finalize a greenhouse gas regulation under section 111(d) for existing power plants by 2012 (see 2010 proposed settlement announced Dec. 23, 2010, available at *http://www2.epa.gov/sites/production/files/2013–09/documents/boilerghgsettlement.pdf*), but did not propose the rule until June 2014.

EIA recently reported that U.S. energy-related CO2 emissions will remain flat through 2040, and below 2005 levels, without the "proposed Clean Power Plan or other actions beyond current policies to limit or reduce CO2 emissions."[47]

Given the complex and extraordinary burdens a final rule may impose, and the potential that the rule may not be upheld or may be modified, extension of the compliance timelines is warranted to protect States and ratepayers. Further, by providing an additional safe harbor for States, H.R. 2042 also would address concerns that have been raised by many stakeholders, ranging from State regulators to electric utilities, including public power utilities and rural cooperatives, to ratepayers and consumers, about the potential impacts of EPA's proposed rule on electricity prices and reliability. In view of the potentially substantial rate increases that would fall on households and businesses, such relief is also appropriate.

Supporters of the legislation

Supporters of H.R. 2042 include:
Action 22 Southern Colorado
AFFORD Group
Agricultural Council of Arkansas
Air-Conditioning, Heating, and Refrigeration Institute
Alabama Automotive Manufacturer's Association
Alabama Coal Association
Alaska Chamber of Commerce
American Coalition for Clean Coal Electricity
American Coke and Coal Chemicals Institute
American Farm Bureau Federation
Americans for Prosperity
Americans for Tax Reform
American Foundry Society
American Fuel & Petrochemical Manufacturers
American Knife Manufacturers Association
American Petroleum Institute
American Public Power Association
American Road and Transportation Builders Association
American Waterways Operators
Ames Chamber of Commerce
Arkansas State Chamber of Commerce
Associated Builders and Contractors
Associated Builders and Contractors of Wisconsin
Associated Equipment Distributors
Associated Industries of Florida
Associated Industries of Missouri
Association of American Railroads
Association of Louisiana Electric Cooperatives, Inc.
Automotive Recyclers Association
Balanced Energy Arkansas
Balanced Energy for Texas
Baltimore Washington Corridor Chamber
Bettisworth North Architects and Planners
Billings Montana Chamber of Commerce

[47] EIA, Annual Energy Outlook 2015 available at *http://www.eia.gov/forecasts/AEO/section_carbon.cfm.*

Bismarck Mandan Chamber of Commerce
Brick Industry Association
Bryant Area Chamber of Commerce
Business Council of Alabama
California Cotton Ginners Association
California Cotton Growers Association
California Manufacturers & Technology Association
Caterpillar
Colorado Association of Commerce and Industry
Colorado Mining Association
Consumer Energy Alliance
Copper and Brass Fabricators Council
Council of Industry of Southeastern New York
CropLife America
Dallas Regional Chamber
East Feliciana Chamber of Commerce
Electric Reliability Coordinating Council
Energy Equipment and Infrastructure Alliance
Exotic Wildlife Association
Florida State Hispanic Chamber of Commerce
Forging Industry Association
Fort Worth Chamber of Commerce
Foundry Association of Michigan
Georgia Association of Manufacturers
Georgia Chamber of Commerce
Georgia Motor Trucking Association
Georgia Railroad Association
Greater Burlington Partnership
Greater Houston Partnership
Greater North Dakota Chamber of Commerce
Greater Omaha Chamber
Greater Phoenix Chamber of Commerce
Greater Pittsburgh Chamber of Commerce
Greater Shreveport Chamber of Commerce
Gulf Coast Lignite Coalition
Illinois Coal Association
Illinois Manufacturers' Association
INDA: Association of the Nonwoven Fabrics Industry
Independent Cattlemen's Association of Texas
Independent Petroleum Association of America
Independent Women's Voice
Indiana Cast Metals Association
Indiana Chamber of Commerce
Indiana Manufacturers Association
Industrial Minerals Association—North America
Institute for 21st Century Energy
International Liquid Terminals Association
Iowa Association of Business and Industry
Kansas Chamber of Commerce
Kentucky Coal Association
Kerrville Area Chamber of Commerce
Lignite Energy Council
Lincoln Employers Coalition
Lincoln Independent Business Association
Longview Chamber of Commerce

Louisiana Association of Business and Industry
Louisiana Propane Gas Association
Lubbock Chamber of Commerce
Metals Service Center Institute
Michigan Manufacturers Association
Michigan Railroads Association
Midwest Electric Cooperative Corporation
Midwest Food Processors Association Inc.
Minnesota Chamber of Commerce
Mississippi Energy Institute
Mississippi Manufacturers Association
Missouri Chamber of Commerce and Industry
Monroe Chamber of Commerce
Montana Chamber of Commerce
Montana Coal Council
Montana Contractors' Association
Motor & Equipment Manufacturers Association
Myrtle Beach Area Chamber of Commerce
National Association of Home Builders
National Association of Manufacturers
National Cattlemen's Beef Association
National Electrical Contractors Association
National Federation of Independent Business
National Marine Manufacturers Association
National Mining Association
National Oilseed Processors Association
National Rural Electric Cooperative Association
National Taxpayers Union
National Tooling and Machining Association
Natural Gas Supply Association
Nebraska Chamber of Commerce & Industry
Nebraska Farm Bureau Federation
Nebraska Power Association
Non-Ferrous Founders' Society
North American Die Casting Association
North Carolina Chamber
North Carolina Energy Forum
Ohio Cast Metals Association
Ohio Chamber of Commerce
Ohio Coal Association
Ohio Manufacturers' Association
Ohio Rural Electric Cooperatives, Inc.
Oklahoma Railroad Association
Oklahoma State Chamber of Commerce
Partnership for Affordable Clean Energy
Pennsylvania Chamber of Business & Industry
Pennsylvania Coal Alliance
Pennsylvania Foundry Association
Pennsylvania Independent Oil & Gas Association
Pennsylvania Manufacturers Association
Pennsylvania Waste Industries Association
Petroleum Equipment Suppliers Association
Portland Cement Association
Precision Machined Products Association
Precision Metalforming Association

Printing Industries of America
Railway Supply Institute, Inc.
Rocky Mountain Coal Mining Institute
San Diego East County Chamber
Siouxland Chamber of Commerce
Small Business & Entrepreneurship Council
South Carolina Chamber of Commerce
South Louisiana Electric Cooperative Association
Southwest Louisiana Economic Development Alliance
SPI: The Plastics Industry Trade Association
State Chamber of Oklahoma
Styrene Information & Research Center
Tempe Chamber of Commerce
Tennessee Chamber of Commerce & Industry
Texas Aggregates and Concrete Association
Texas Association of Business
Texas Cast Metals Association
Texas Cotton Ginners' Association
Texas Mining and Reclamation Association
Texas Poultry Federation
Texas Railroad Association
The Chamber of Reno, Sparks and Northern Nevada
The Fertilizer Institute
The Siouxland Initiative
U.S. Chamber of Commerce
United States Hispanic Chamber of Commerce
Valve Manufacturers Association of America
Virginia Chamber of Commerce
Virginia Coal and Energy Alliance
Virginia Manufacturers Association
Western Agricultural Processors Association
West Virginia Coal Association
West Virginia Chamber of Commerce
Wisconsin and Minnesota Petroleum Council
Wisconsin Cast Metals Association
Wisconsin Independent Businesses
Wisconsin Industrial Energy Group
Wisconsin Manufacturers & Commerce
Wisconsin Motor Carriers Association
Wyoming Chamber Partnership
Wyoming Mining Association

HEARINGS

The Subcommittee on Energy and Power held a legislative hearing on the discussion draft of H.R. 2042 on April 14, 2015, and held four prior hearings relating to EPA's pending regulation of existing power plants under section 111(d) of the Clean Air Act. The hearings and witnesses included the following:

- On April 14, 2015, the Subcommittee held a hearing entitled "EPA's Proposed 111(d) Rule for Existing Power Plants, and H.R. _____, Ratepayer Protection Act," and received testimony from:
  - The Honorable Janet McCabe, Acting Assistant Administrator for the Office of Air and Radiation, U.S. Environmental Protection Agency;

- Eugene M. Trisko, Energy Economist and Attorney on behalf of the American Coalition for Clean Coal Electricity;
- Lisa D. Johnson, CEO and General Manager, Seminole Electric Cooperative, Inc. on behalf of National Rural Electric Cooperative Association;
- Kevin Sunday, Manager, Government Affairs, Pennsylvania Chamber of Business and Industry;
- Paul Cicio, President, Industrial Energy Consumers of America;
- Susan F. Tierney, Senior Advisor, Analysis Group; and
- Melissa A. Hoffer, Chief, Energy and Environment Bureau, Office of the Attorney General, Commonwealth of Massachusetts.

• On March 17, 2015, the Subcommittee held a hearing entitled "EPA's Proposed 111(d) Rule for Existing Power Plants: Legal and Cost Issues" and received testimony from:

- Laurence H. Tribe, Carl M. Loeb University Professor and Professor of Constitutional Law, Harvard Law School;
- Richard L. Revesz, Lawrence King Professor of Law, Dean Emeritus, Director, Institute for Policy Integrity, New York University School of Law;
- Allison D. Wood, Partner, Hunton & Williams;
- Art Graham, Chairman, Florida Public Service Commission;
- Kelly Speakes-Backman, Commissioner, Maryland Public Service Commission;
- Craig Butler, Director, Ohio Environmental Protection Agency; and
- Donald van der Vaart, Secretary, North Carolina Department of Environment and Natural Resources.

• On September 9, 2014, the Subcommittee held a hearing entitled "State Perspectives: Questions concerning EPA's Proposed Clean Power Plan" and received testimony from:

- Kenneth W. Anderson, Jr., Commissioner, Public Utility Commission of Texas;
- Travis Kavulla, Commissioner, Montana Public Service Commission;
- Henry R. Darwin, Director, Arizona Department of Environmental Quality;
- Tom W. Easterly, Commissioner, Indiana Department of Environmental Management;
- Kelly Speakes-Backman, Commissioner, Maryland Public Service Commission; and
- David W. Danner, Chairman, Washington Utilities and Transportation Commission.

• On July 29, 2014, the Subcommittee held a hearing entitled "FERC Perspectives: Questions Concerning EPA's Proposed Clean Power Plan and other Grid Reliability Challenges" and received testimony from:

- Cheryl A. LaFleur, Acting Chairman, Federal Energy Regulatory Commission;
- Philip D. Moeller, Commissioner, Federal Energy Regulatory Commission;

- John R. Norris, Commissioner, Federal Energy Regulatory Commission;
- Tony Clark, Commissioner, Federal Energy Regulatory Commission; and
- Norman C. Bay, Commissioner, Federal Energy Regulatory Commission.

• On June 19, 2014, the Subcommittee held a hearing entitled "EPA's Proposed Carbon Dioxide Regulations for Power Plants" and received testimony from:

- Janet McCabe, EPA Acting Assistant Administrator for Air and Radiation.

COMMITTEE CONSIDERATION

On April 21, 2015 and April 22, 2015, the Subcommittee on Energy and Power met in open markup session to consider H. R. _____, Ratepayer Protection Act, and forwarded the bill to the full Committee, without amendment, by a record vote of 17 ayes and 12 nays. During the markup, three amendments were offered and rejected by a record vote.

On April 28, 2015 and April 29, 2015, the Committee on Energy and Commerce met in open markup session to consider H.R. 2042, which was substantially similar to the bill forwarded by the Subcommittee. During the markup, five amendments were offered, of which two were offered and rejected by voice vote, and three were offered and rejected by record votes. A motion by Mr. Upton to order H.R. 2042, reported to the House, without amendment, was agreed to by a record vote of 28 ayes and 22 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. 2042 reported to the House, without amendment, was agreed to by a record vote of 28 ayes and 22 nays. The following reflects the record votes taken during the Committee consideration:

COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 9

BILL: H.R. 2042, the "Ratepayer Protection Act of 2015"

AMENDMENT: An amendment offered by Mr. Rush, No. 2, to require a determination by the governor of a State that adverse effects of any final rule addressing carbon dioxide emissions from existing fossil fuel-fired electric utility generating units on electricity ratepayers or electric reliability shall require a certification that any ratepayer increases associated with implementing the rule would be greater than costs associated with responding to extreme weather events associated with human-caused climate change.

DISPOSITION: NOT AGREED TO, by a roll call vote of 19 yeas and 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton				Mr. Pallone	X		
Mr. Barton				Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel			
Mr. Pitts		X		Mr. Green			
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui			
Mrs. McMorris Rodgers		X		Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke			
Mr. Griffith		X		Mr. Loebsack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers							
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson		X					
Mr. Collins							
Mr. Cramer		X					

04/29/2015

COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 10

BILL: H.R. 2042, the "Ratepayer Protection Act of 2015"

AMENDMENT: An amendment offered by Mr. Rush, No. 4, to require a determination by the governor of a state that adverse effects of any final rule addressing carbon dioxide emissions from existing fossil fuel-fired electric utility generating units on electricity ratepayers or electric reliability shall include a certification that the inapplicability of the rule will not have a significant adverse effect on public health.

DISPOSITION: NOT AGREED TO, by a roll call vote of 20 yeas and 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel			
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Scalise		X		Mr. Butterfield			
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth			
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loebsack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores							
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					

04/29/2015

COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 11

BILL: H.R. 2042, the "Ratepayer Protection Act of 2015"

AMENDMENT: An amendment offered by Mr. Pallone, No. 5, to provide that it is the sense of the Congress that the Federal Government should promote national security, economic growth, and public health by addressing human-induced climate change through the increased use of clean energy, energy efficiency, and reductions in carbon emissions.

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas and 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel			
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loebsack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores							
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					

04/29/2015

COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 12

BILL: H.R. 2042, the "Ratepayer Protection Act of 2015"

AMENDMENT: A motion by Mr. Upton to order H.R. 2042 favorably reported to the House. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 28 yeas and 22 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Whitfield	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel			
Mr. Pitts	X			Mr. Green		X	
Mr. Walden	X			Ms. DeGette		X	
Mr. Murphy	X			Ms. Capps		X	
Mr. Burgess	X			Mr. Doyle		X	
Mrs. Blackburn	X			Ms. Schakowsky		X	
Mr. Scalise				Mr. Butterfield		X	
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers				Ms. Castor		X	
Mr. Harper	X			Mr. Sarbanes		X	
Mr. Lance	X			Mr. McNerney		X	
Mr. Guthrie	X			Mr. Welch		X	
Mr. Olson	X			Mr. Lujan		X	
Mr. McKinley	X			Mr. Tonko		X	
Mr. Pompeo	X			Mr. Yarmuth		X	
Mr. Kinzinger	X			Ms. Clarke		X	
Mr. Griffith	X			Mr. Loebsack		X	
Mr. Bilirakis	X			Mr. Schrader		X	
Mr. Johnson	X			Mr. Kennedy		X	
Mr. Long	X			Mr. Cardenas		X	
Mrs. Ellmers	X						
Mr. Bucshon	X						
Mr. Flores							
Mrs. Brooks	X						
Mr. Mullin	X						
Mr. Hudson	X						
Mr. Collins	X						
Mr. Cramer	X						

04/29/2015

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. 2042 provides direction to EPA to improve the transparency and timeliness of the preconstruction permit process under the Clean Air Act.

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. 2042, 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. 2042 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, May 13, 2015.

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. 2042, the Ratepayer Protection Act of 2015.

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

Sincerely,

KEITH HALL, *Director.*

Enclosure.

H.R. 2042—Ratepayer Protection Act of 2015

This legislation would postpone the dates by which states and operators of existing fossil-fuel fired power plants must comply with any existing or future rules addressing emissions of carbon dioxide

proposed by the Environmental Protection Agency (EPA). Such rules include:

- Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, published in the *Federal Register* on June 18, 2014; and,
- Carbon Pollution Emission Guidelines for Existing Stationary Sources: EGUs in Indian Country and U.S. Territories; Multi-Jurisdictional Partnerships, published in the *Federal Register* on November 4, 2014.

Those rules would require states, territories, and Indian tribes to meet individual goals for reducing carbon dioxide emissions set by EPA by considering a broad array of actions related to energy efficiency by certain dates.

Under H.R. 2042, the compliance dates for such rules would be postponed while a judicial review is pending. The postponement would last until a judgment becomes final and is no longer subject to further appeal or review. In addition, under this bill, a state would not be required to develop any plans to meet emissions goals or comply with a federal plan under a final rule if the governor of that state determines that implementing a state plan or complying with a federal plan under a final rule would have an adverse effect on electricity ratepayers or on the reliability of the state's electricity system.

Although enacting this legislation would postpone compliance dates for rules related to carbon emissions, it would not prohibit EPA from working on activities required for implementing such rules over the next several years. Those activities include developing guidance and providing technical assistance to states. Thus, CBO estimates that implementing this legislation would not have a significant effect on the federal budget. However, to the extent that state plans required under those rules are postponed because of actions initiated by state governors, EPA's expenditures for state grants could be postponed for a few years.

Enacting H.R. 2042 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2042 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Susanne S. Mehlman. The estimate was approved by Theresa Gullo, 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. 2042 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. 2042 specifically directs to be completed no specific rulemakings within the meaning of 5 U.S.C. 551 that would not otherwise be issued by the agency.

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. Short title

This section provides the short title of "Ratepayer Protection Act of 2015."

Section 2. Extending compliance dates of rules addressing carbon dioxide emissions from existing power plants pending judicial review

This section would extend the compliance dates of any final rule issued under section 111(d) of the CAA addressing CO2 emissions from existing fossil fuel-fired electric utility generating units, including for submittal of State plans.

Section 2(a) provides that the term "compliance date" means the date by which any State, local, or tribal government or other person is first required to comply with the rule, including the date for submittal of State plans to the EPA.

Section 2(b) provides that the final rules subject to the Act include any final rule that addresses CO2 emissions from existing sources that are fossil fuel-fired electric utility generating units under section 111(d) of the CAA, including any final rule that succeeds the EPA's proposed rules published at 79 Fed. Reg. 34830 (June 18, 2014) or 79 Fed. Reg. 65482 (November 4, 2014).

Section 2(c) provides that the time period by which the compliance dates would be extended would be the period of time that begins sixty days after the final rule appears in the Federal Register, and ends on the date on which judgment becomes final, and no longer subject to further appeal or review, in all actions filed during the initial sixty days after the rule appears in the Federal Register seeking review of the rule, including actions pursuant to CAA section 307.

Section 3. Ratepayer protection

This section provides that no State shall be required to adopt a State plan, and no State or entity within a State shall become subject to a Federal plan, pursuant to any final rule described in section 2(b), if the Governor of the State makes a determination, and notifies the EPA Administrator, that implementation of the State or Federal plan would have a significant adverse effect on 1) the

State's residential, commercial, or industrial ratepayers, taking into account the rate increases necessary to implement the State or Federal plan, and other rate increases that have been or are anticipated to be necessary to implement other Federal or State environmental requirements; or 2) the reliability of the State's electricity system, taking into account the effects on the State's existing and planned generation and retirements, transmission and distribution infrastructure, and projected electricity demands.

This section further provides that, in making such a determination, the Governor consult with the State's energy, environmental, public health, and economic development departments or agencies, and the Electric Reliability Organization, as defined in section 215 of the Federal Power Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

DISSENTING VIEWS

Issued by the EPA on June 2, 2014, the proposed "Clean Power Plan" rule establishes emission guidelines for states to follow in developing plans to control carbon pollution from existing coal-fired and natural gas-fired power plants under section 111(d) of the Clean Air Act.[1]

H.R. 2042 would adversely impact the Clean Power Plan in two very significant ways. First, the bill would suspend implementation of the final Clean Power Plan and would extend all final compliance and submission deadlines by the amount of time needed to complete judicial review. And second, the bill allows governors to effectively exempt their respective states from any requirements of a federal plan to reduce carbon pollution from existing power plants. Under current law, EPA is required to develop and implement a federal section 111(d) plan for any state that fails to submit its own state plan. H.R. 2042 would overturn this existing Clean Air Act requirement as it relates to the Clean Power Plan.

EPA ACTIONS ON POWER PLANT EMISSIONS OF CARBON POLLUTION

Fossil fuel-fired power plants are by far the largest emitters of greenhouse gases from stationary sources in the United States; they are responsible for about one-third of total U.S. greenhouse gas emissions.[2] There are currently no federal limits on their emissions of carbon pollution.

In June 2013, President Obama announced a Climate Action Plan to cut carbon pollution and to prepare for the effects of climate change.[3] As part of that Plan, the President directed EPA to use its existing authority under the Clean Air Act to control carbon pollution from new and existing fossil fuel-fired power plants.[4] President Obama simultaneously issued a Presidential Memorandum on Power Sector Carbon Pollution Standards providing more detailed direction to EPA.[5] It 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 state submission of plans regulating existing plants.[6] EPA expects to issue its final standards for new,

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[1] U.S. Environmental Protection Agency, *Carbon Pollution; Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,* 79 Fed. Reg. 34830 (June 18, 2014) (Proposed Rule) (online at www.gpo.gov/fdsys/pkg/FR–2014–06–18/pdf/2014–13726.pdf) [hereinafter U.S. Environmental Protection Agency Clean Power Plan].

[2] *Id.* at 34833; U.S. Environmental Protection Agency, *Clean Power Plan, Proposal to Reduce Carbon Pollution from Existing Power Plants,* at 2 (June 2, 2014) (presentation to Congressional Staff) (online at www2.epa.gov/sites/production/files/2014–05/ghg-chart.png).

[3] Executive Office of the President, The *President's Climate Action Plan* (June 2013) (online at www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf).

[4] *Id.* at 6.

[5] President Barack Obama, *Presidential Memorandum—Power Sector Carbon Pollution Standards* (June 25, 2013) (online at www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards).

[6] *Id.*

modified and existing sources under Clean Air Act section 111 this summer.[7]

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. These "new source performance standards" under section 111(b) establish limits on air pollution for sources in a given category (e.g., fossil fuel-fired power plants, oil refineries, pulp and paper plants, etc.) based on what can be achieved through "the best system of emission reduction . . . adequately demonstrated."[8] In determining the "best system of emission reduction" (BSER), EPA must take into account cost and "any nonair quality health and environmental impact and energy requirements."[9] Under section 111(b), EPA proposed performance standards for new coal- and natural gas-fired power plants in September 2013.[10]

For existing sources in a category covered by a new stationery source performance standard, section 111 would defer to other Clean Air Act provisions for pollutants that are: (1) covered by a National Ambient Air Quality Standard (NAAQS); or (2) listed as a hazardous air pollutant under section 112.[11] Pollutants from existing sources that are not otherwise regulated under those provisions are addressed under section 111(d). With respect to such pollutants, section 111(d) requires EPA to issue rules directing the states to reduce pollution from existing sources that would have been covered by a section 111(b) standard if they were new sources. Under section 111(d)(1), EPA must establish procedures for states to submit state plans to regulate existing sources that are similar to the procedures and requirements for State Implementation Plans (SIPs) under section 110.

Specifically, the state plans for existing sources must apply a "standard of performance" for emissions of air pollutants that reflects the degree of emission limitation achievable through BSER, as applied to existing sources. Under this provision, EPA determines the BSER and the emission limitation it can achieve. States have considerable flexibility, however, in deciding how to achieve the overall pollution reduction goals for these sources. The state may take into consideration, for example the remaining useful life of the existing source, as well as other factors.

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[7] Senate Committee on Environment and Public Works, Testimony of the Honorable Janet McCabe, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, *Hearing on "Examining EPA's Proposed Carbon Dioxide Emissions Rules from New, Modified, and Existing Power Plants,"* 114th Cong. (Feb. 11, 2015); U.S. Environmental Protection Agency, *Key Dates: Cutting Carbon Pollution from Power Plants* (Jan. 7, 2015) (online at www2.epa.gov/sites/production/files/2015-01/documents/20150107fs-key-dates.pdf)

[8] Clean Air Act §§ 111(a)(1); 111(b).

[9] *Id.* at § 111(a)(1).

[10] 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) (online at *www.gpo.gov/fdsys/pkg/FR-2014-01-08/pdf/2013-28668.pdf*).

[11] Clean Air Act § 111(d)(1).

B. Proposed rule for state plans for existing sources

1. Outreach process

In developing this proposal, EPA has engaged in an unprecedented level of outreach for the pre-proposal stage of a rulemaking, and the proposal reflects extensive stakeholder input.[12] Between August 2013 and June 2014, EPA held an overview webinar and four national teleconferences with states and a wide variety of stakeholders; established a mechanism to accept input by e-mail and web (receiving more than 2,000 emails); held 11 public listening sessions across the country that were attended by over 3,300 people; sent consultation letters to 584 tribal leaders; and organized and participated in hundreds of meetings.[13]

Among others, EPA met with state leaders, including governors, environmental commissioners, energy officers, public utility commissioners and air directors; industry leaders and trade association representatives; private, investor-owned, public and cooperative utilities and their associations; Independent System Operators and Regional Transmission Organizations; environmental and environmental justice organizations; religious groups; public health groups, doctors and health care providers; consumer groups; and individual unions, including the United Mine Workers of America, the International Brotherhood of Boilermakers, the International Brotherhood of Electrical Workers, and the AFL-CIO.[14]

EPA indicated that the public submitted over 3.5 million public comments were submitted on the proposed Clean Power Plan before the December 1, 2014 deadline. The Agency will review and address all of the filed comments before finalizing the rule.[15]

2. Proposed emission guidelines for state plans

The proposed emissions guidelines establish an individual goal for each state, expressed as a carbon intensity target. The carbon intensity target is a rate-based limit, which is expressed as a limit on the total pounds of carbon dioxide emitted from fossil fuel-fired power plants in the state per megawatt hour (MWh) of electricity generated in the state, adjusted to account for the MWh reduced through energy efficiency savings.[16] The individual state carbon intensity goals are produced by applying a consistent national formula to each state's fossil fuel-fired power plants on a statewide basis, inputting state and regional-specific information to produce state goals that are tailored to each state's circumstances.[17] For each state, EPA proposed a final state goal, to be achieved by 2030, and a less stringent interim goal that would apply for the 2020–2029 phase-in period.[18]

EPA developed the standards through several steps. First, EPA identified the "best system of emission reduction . . . adequately

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[12] U.S. Environmental Protection Agency Clean Power Plan at 34845.
[13] *Id.* at 34845–34847.
[14] *Id.*
[15] Senate Committee on Environment and Public Works, Testimony of the Honorable Janet McCabe, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, *Hearing on "Examining EPA's Proposed Carbon Dioxide Emissions Rules from New, Modified, and Existing Power Plants,"* 114th Cong. (Feb. 11, 2015).
[16] U.S. Environmental Protection Agency Clean Power Plan at 34892.
[17] *Id.* at 34890–34892.
[18] *Id.* at 34895.

demonstrated" for greenhouse gas emissions from fossil fuel-fired power plants.[19] In identifying the BSER, EPA relied heavily on the fact that the power system is an interconnected and integrated system in which the demand for electricity is met through different sources of electricity supply (including energy savings through efficiency).[20] These different sources are constantly substituted for each other, both in the short term, through the dispatch order of various power sources (including demand-side savings), and over time, through investments in various new sources of supply (including efficiency). EPA proposed that the BSER is comprised of four building blocks: (1) making fossil fuel power plants more efficient; (2) using low-emitting power sources more by generating more electricity from existing natural gas combined cycle units; (3) building more zero and low-emitting power sources including renewables and some nuclear units; and (4) using electricity more efficiently through demand-side measures.[21]

For each building block, EPA analyzed the level of application that would be reasonable for the purpose of establishing state goals, taking into account technical feasibility, the quantity of emissions reductions achieved, the costs per metric ton of carbon dioxide, reliability, and other factors.[22] EPA emphasized that it was not identifying the *maximum* quantity of pollution reduction that could be achieved through each building block, but only identifying a level of application that would be *reasonable*.[23] For building block 1, EPA estimates that on average, existing coal-fired units can improve their heat rate (efficiency of power production) by 6%.[24] For building block 2, EPA estimates that existing natural gas combined cycle units could be used at up to 70% of their capacity.[25] For building block 3, EPA developed a methodology to estimate the technical and economic renewable energy potential for each state, based on existing levels of renewable generation in each state and region-specific growth factors, as well as estimating the amount of nuclear generating capacity that could be preserved from retirement.[26] For building block 4, EPA estimates, based on the performance achieved by the top 12 states, that it would be reasonable for each state to increase the level of demand-side energy efficiency to achieve an efficiency improvement rate of 1.5% per year.[27]

Next, EPA proposed to determine that the BSER is the combination of all four building blocks, each applied at the identified reasonable level of effort.[28] Applying this BSER to the specific circumstances of each state produces the state goals, expressed as a carbon intensity target for the fossil fuel-fired generation in each state. The state goals vary widely, from a low (most stringent) goal of 228 pounds of carbon dioxide per MWh in Washington, to a high

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[19] *Id.* at 34835–34837, 34854–34890.
[20] *Id.*
[21] *Id.*; U.S. Environmental Protection Agency, *Fact Sheet: Clean Power Plan; National Framework for States* (June 2, 2014) (online at www2.epa.gov/sites/production/files/2014–05/documents/20140602fs-setting-goals.pdf).
[22] U.S. Environmental Protection Agency Clean Power Plan at 34836, 34858–34875.
[23] *Id.* at 34858–34875, 34893 (emphasis added).
[24] *Id.* at 34859–34862.
[25] *Id.* at 34862–34866.
[26] *Id.* at 34866–34871.
[27] *Id.* at 34871–34875.
[28] *Id.* at 34878–34890.

(least stringent) goal of 1,783 pounds of carbon dioxide per MWh in North Dakota.[29]

3. State flexibilities

Under EPA's proposal, the basic elements for a state plan to be approvable are: the plan includes enforceable carbon dioxide limits on fossil fuel-fired power plants; any additional measures that would reduce carbon from these sources are also enforceable; and the plan demonstrates that the state will achieve its state goal over the specified time frame.[30] EPA proposed multiple ways to maximize state flexibility in controlling carbon pollution from power plants and achieving the state goals.[31] States and other stakeholders requested these flexibilities in the pre-proposal process.

First, EPA proposed that a state could either use its *rate-based goal*, or could convert that goal (using a proposed formula for the translation) into a *mass-based goal*, which would cap the total quantity of carbon dioxide emissions from fossil fuel-fired power plants in the state.[32]

Second, EPA proposed that states should have extensive flexibility in their plans in deciding how to achieve their state-wide goals.[33] While EPA used the building blocks to determine what would be a reasonable carbon intensity goal for each state, EPA emphasized that there is no obligation for the states to use the particular control measures, or apply them at the same levels, that EPA identified as the BSER.[34] In the proposal, EPA identified the potential for greater emissions reductions for each of the building blocks compared to the levels at which EPA applied each building block to generate the state goals.[35] EPA also identified other measures that states could employ in addition to measures under the building blocks, including co-firing with natural gas, building new natural gas power plants, and building new nuclear capacity beyond what is already planned.[36] In addition, EPA's proposal permits a state to choose either to place the full compliance obligation on fossil fuel-fired power plants in the state or undertake a "portfolio approach." A portfolio approach would include additional measures, such as state or local demand-side efficiency programs, that would reduce emissions from fossil fuel-fired power plants but would be undertaken by the state or other entities.[37] EPA also proposed that states could choose to achieve their state goals through participation in multi-state approaches, which EPA expects could enhance efficiency and lower costs.[38]

Third, EPA proposed to provide flexibility in the timing both of when states must submit their plans and of when emission reductions would have to be achieved. States must submit their plans by June 2016; however, EPA proposed to allow a one-year extension

[29] *Id.* at 34895.
[30] *Id.* at 34837–34838; see also id. at 34909–34914 (detailing criteria for approvable state plan).
[31] *Id.* at 34897–34898.
[32] *Id.* at 34893–34894.
[33] *Id.* at 34837–34838.
[34] *Id.* at 34897.
[35] *Id.* at 34858–34876.
[36] *Id.*
[37] *Id.* at 34897, 34900–34902.
[38] *Id.* at 34833, 34900, 34910.

for states that submit an initial plan but need additional time to complete it and a two-year extension for states participating in multi-state programs.[39] The ten-year phase-in period for achieving the reductions allows for the use of measures, such as energy efficiency, that ramp up over time.[40] States also would not be required to meet their interim goal each year, but rather would be able to meet their goals on average over the 2020–2029 period.[41]

4. Benefits and costs of the proposal

If the proposed rule is finalized, EPA estimates that in 2030, carbon pollution from the power sector will be reduced by 30% compared to 2005 levels.[42] In addition, this rule will cut pollution that leads to soot and smog by more than 25% in 2030.[43] EPA estimates the climate and public health benefits of these pollution controls will range anywhere between $55 billion and $93 billion in 2030, and will help avoid between 2,700 and 6,600 premature deaths and 140,000 and 150,000 asthma attacks in children in 2030 alone.[44] EPA estimates that the benefits of the proposal will outweigh the costs by at least 6 to 1, and by possibly as much as 12 to 1.[45] In addition, while electricity *prices* may increase somewhat, EPA estimates that, due to increased use of cost-effective energy efficiency measures, actual electricity *bills* will fall by roughly 8% in 2030.[46]

ANALYSIS OF H.R. 2042 THE "RATEPAYER PROTECTION ACT OF 2015"

The following is a brief summary and analysis of the legislation

A. Summary of H.R. 2042

Section 2 of the bill delays implementation of the final Clean Power Plan by extending all compliance deadlines based on pending judicial review. Under subsection (b), the compliance or submission date extension applies to "any final rule to address carbon dioxide emissions from existing sources that are fossil fuel fired electric utility generating units under section 111(d) of the Clean Air Act." Also, subsection (b) specifically references and applies to rules that grow out of both the Clean Power Plan and the November 4, 2014 supplemental proposal covering Indian Country and U.S. Territories.[47]

Subsection (c) establishes a uniform time period for all Clean Power Plan compliance and submission deadline extensions. Under the legislation, the time period starts 60 days after the final rule

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[39] *Id.* at 34915; U.S. Environmental Protection Agency, *Key Dates: Cutting Carbon Pollution from Power Plants* (Jan. 7, 2015) (online at www2.epa.gov/sites/production/files/2015-01/documents/20150107fs-key-dates.pdf).

[40] *Id.* at 34838–34839, 34899, 34904–34906.

[41] *Id.* at 34906.

[42] U.S. Environmental Protection Agency, *Fact Sheet: Clean Power Plan, Overview of the Clean Power Plan* (June 2, 2014) (online at www2.epa.gov/sites/production/files/2014-05/documents/20140602fs-overview.pdf).

[43] Id.

[44] Id.

[45] U.S. Environmental Protection Agency, *Fact Sheet: Clean Power Plan, By the Numbers* (June 2, 2014) (online at www2.epa.gov/sites/production/files/2014-06/documents/20140602fs-important-numbers-clean-power-plan.pdf).

[46] U.S. Environmental Protection Agency, *Fact Sheet: Clean Power Plan, Overview of the Clean Power Plan* (June 2, 2014) (online at www2.epa.gov/sites/production/files/2014-05/documents/20140602fs-overview.pdf) (emphasis added).

[47] H.R. *2042*, the "Ratepayer Protection Act of 2015," at § 2(b).

appears in the Federal Register, and ends when "judgment becomes final, and no longer subject to further appeal or review."[48]

Section 3 of the bill restates current law, that no state is required to submit a 111(d) plan. Subsection (a) further allows any governor to decide that the state shall not be subject to a federal 111(d) plan, if the governor makes a determination that implementation of the state or federal plan would "have a significant adverse effect on the State's residential, commercial, or industrial ratepayers" or would "have a significant adverse effect on the reliability of the State's electricity system."[49]

In making a determination on the state or federal plan's impact on ratepayers and electric reliability, the governor shall take into account a number of specific factors. Regarding the potential impact on ratepayers, a governor must consider any rate increases that are either associated with, or necessary for, implementation of the state or federal plan, as well as "other rate increases that have been or are anticipated to be necessary to implement, or are associated with, other Federal or State environmental requirements."[50] Further, the governor must consider the state's existing and planned electricity generation, retirements, transmission and distribution infrastructure, and projected demand when determining the state or federal plan's impact on electric reliability.[51]

Subsection (b) requires the governor to consult with the public utility commission or public service commission of the state, state environmental protection, public health and economic departments, and any regional transmission organization or independent service operator with jurisdiction over the state.

B. Issues raised by the H.R. 2042

This legislation raises several major issues. In summary, the bill would suspend implementation of the Clean Power Plan and effectively prevent EPA from ever controlling carbon pollution from existing power plants to any significant degree, if a state fails—or outright refuses—to comply with the requirements of section 111(d) of the Clean Air Act.

The bill's proponents argue that legislation is needed to delay implementation of the Clean Power Plan until all legal challenges are resolved by the courts. However, legal challenges to final EPA rules are routine and courts have the power on their own to stay the effectiveness of regulations under court challenge. The bill throws out the existing judicial process by legislatively granting a blanket extension for any compliance deadline, regardless of the merits of the legal challenge or the final outcome. Under the legislation, the Clean Power Plan would automatically be delayed by however much time it takes to conclude litigation, providing encouragement both for frivolous challenges and additional appeals in order to extend the ultimate compliance time.

The bill's proponents have also argued that the legislation is needed to provide a "safe harbor" for states who cannot—or will not—comply with the requirements of the Clean Power Plan.

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[48] *Id.* at § 2(c).
[49] *Id.* at § 3(a).
[50] *Id.* at § 3(a)(1).
[51] *Id.* at § 3(a)(2).

Under current law, EPA sets the emissions reduction goals under section 111(d) and it is up to the states to decide how to best achieve these reductions. States are not required to develop or implement their own plans for reducing carbon emissions from existing power plants, but EPA is required to step in with a federal 111(d) plan when a state does not implement its own. The Clean Air Act's use of cooperative federalism ensures that environmental risks are addressed, either by state action or by federal action where a state fails to act.

The bill's opt-out provision disregards decades of success under the Clean Air Act's use of cooperative federalism. Instead, the draft would allow governors to refuse to comply unconditionally with the federal requirements of the Clean Power Plan. A governor would be able to take the "Just Say No" approach to reducing carbon emissions by simply determining that compliance with a phantom plan would adversely impact ratepayers or electric reliability.

A number of amendments were offered during the full committee markup to address these concerns. The first, offered by Rep. Tonko, would ensure that a governor's decision to opt-out of the Clean Power Plan is subject to judicial review. The amendment highlighted that a governor's decision to not follow federal law is completely unreviewable under the bill. The second amendment, offered by Rep. Rush, would require a governor wishing to opt-out of the Clean Power Plan, to certify that the ratepayer costs attributed to implementation of the Clean Power Plan must exceed the state costs of responding to extreme weather events caused by climate change such as sea level rise, flooding, storms, wildfires and drought. Rep. Rush also offered an amendment that would require a governor wishing to opt-out of the Clean Power Plan, to certify that such a decision would not result in significant adverse public health effects, including childhood asthma attacks, heart attacks, hospital admissions, and missed school and work days. Finally, Rep. Pallone offered an amendment to add a sense of Congress that the federal government should promote national security, economic growth and public health by addressing human induced climate change through the increased use of clean energy, energy efficiency and reductions in carbon pollution. The amendment was identical to an amendment offered by Sen. Bennet, which passed the Senate on March 26, 2015, with the support of all Democratic Senators, as well as seven Republican Senators.[52] All amendments were defeated in full committee on a party line vote. H.R. 2042 was approved by the full committee by a party line vote of 28–23.

LEGAL ISSUES RELATED TO THE CLEAN POWER PLAN

Although numerous parties critical of the Clean Power plan have suggested that EPA lacks authority for the plan or that the details of the plan cannot be squared with the language of the Clean Air Act, there is ample reason to believe that legal challenges to the EPA rule will ultimately fail. EPA has set forth its interpretation of the Clean Air Act as applied to the Clean Power Plan in a detailed legal memorandum and its interpretation is reasonable,

[52] Ayotte, Collins, Graham, Heller, Murkowski, Kirk and Portman

grounded in the statute and case law and supported by the facts.[53] EPA's reasonable interpretation of the statute will be entitled to deference.[54]

Analysis of EPA legal authority

As an initial matter, it is beyond dispute that the Statutes at Large, not the United States Code provide definitive evidence of the law. The majority report recognizes this fact at footnote 24, and specifically cites 1 U.S.C. 112 for that proposition ("the Statutes at Large serve as legal evidence of the law.") Nor can it be disputed that there are two provisions relating to section 111(d) in the Statutes at Large and both provisions were passed by both chambers of Congress in identical fashion and both provisions were signed by the President into law.

Despite the majority report's consistent citation to the United States Code, on this point, the United States Code is not the law and it cannot be considered controlling. As the majority admits, only when the United States Code is "enacted as positive law" does it "replace the statutes at large" as "legal evidence of the laws."[55] Such codification has not happened and therefore the Statutes at Large, with both the House and Senate provisions are the law of the United States.[56]

Contrary to the views of the majority, there is no evidence that the Senate-originated language was enacted into law in error, whereas a wealth of evidence shows that it was intentionally adopted by Congress. Because there is no dispute that this language was included in the final bill passed by both houses of Congress and signed into law by the President of the United States, the Senate provision is just as much part of the Clean Air Act as the House-originated language. For EPA now to disregard that Senate provision would be a dereliction of the executive's duty to "take care the laws be faithfully executed."[57]

In addition, the majority report cites the Chafee-Baucus "Statement of Senate Managers" as evidence that the Senate-originated amendment is nothing more than a scrivener's error. In fact, this document is entitled to no legal weight and is scant evidence of the actual intent of Congress as a whole in adopting the 1990 Clean Air Act Amendments. This statement by two members of one chamber was not reviewed or approved by all of the Senate conferees, let alone by the House conferees.[58] Nor was it reviewed by the members of Congress who voted to adopt the final statutory language or by the President who signed the final statute into law. For these reasons, the D.C. Circuit has explicitly held that the

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[53] U.S. Environmental Protection Agency, *Legal Memorandum for Proposed Carbon Pollution Emission Guidelines for Existing Electric Utility Generating Units* (June 2, 2014) (online at www2.epa.gov/sites/production/files/2014-06/documents/20140602-legal-memorandum.pdf).

[54] *Chevron U.S.A., Inc. v. Natural Res. Def. Council,* 467 U.S. 837, 843–44 (1984).

[55] Majority Report at footnote 24.

[56] *See United States v. Welden,* 377 U.S. 95, 98 n.4 (1964) ("[T]he Code cannot prevail over the Statutes at Large when the two are inconsistent.") (quoting *Stephan v. United States,* 319 U.S. 423, 426 (1943)); see also Five Flags Pipe Line Co. v. DOT, 854 F.2d 1438, 1440 (D.C. Cir. 1988) ("Thus, where the language of the Statutes at Large conflicts with the language in the United States Code that has not been enacted into positive law, the language of the Statutes at Large controls.")

[57] U.S. Const., art. II, § 3.

[58] *see* U.S. Senate, Debate on Agreeing to H. Rept 101–952 (Oct. 27, 1990)

Chafee-Baucus Statement "cannot undermine the statute's language." [59]

The majority's interpretation of section 111(d) merely repeats the arguments made by Murray Energy in their failed lawsuits in the D.C. Circuit challenging EPA's proposed Clean Power Plan. These arguments are not persuasive and are undercut by the text, structure, design, and history of the Clean Air Act, which demonstrate that the agency must regulate carbon dioxide pollution from existing power plants under section 111(d), regardless of whether or not it has regulated power plants' hazardous air pollutant ("HAP") emissions under section 112. EPA's actions are fully in accord with the purpose of section 111(d), and the Clean Power Plan is on solid legal footing.

In 1990, Congress enacted two amendments to section 111(d)(1)(A)(i) to replace an obsolete cross-reference to the list of HAPs. As the Congressional Research Service's (CRS) legislative history, compiled shortly thereafter, these amendments "appear to be duplicative; both, in different language, change the reference to section 112." [60] Despite the arguments of the majority, both the Senate and House amendments authorize EPA's promulgation of the Clean Power Plan. There is no doubt that the Senate amendment permits EPA to regulate power plant CO_2 emissions under section 111(d), since it requires the agency to control "any existing source 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 112(b) . . . ." Since the agency has not issued air quality criteria for CO_2 or listed it under section 108(a) or 112(b), it must regulate carbon dioxide pollution from existing power plants.

The best interpretation of the House-originated provision produces an identical result, consistent with the observation that the two amendments are "duplicative." Therefore even if one were to rely solely on the House provision and exclude the Senate language (which again, would be to disregard the actual law), EPA would continue to have authority to promulgate the Clean Power Plan.

The House language directs the agency to regulate "any existing source 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 . . ." Because EPA has not issued air quality criteria for carbon dioxide or listed it under section 108(a), this language requires the agency to regulate existing sources' emissions of carbon dioxide under section 111(d) unless carbon dioxide qualifies

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[59] *Environmental Defense Fund v. EPA,* 82 F.3d 451, 460 n. 10 (D.C. Cir. 1996).

[60] *See* Congressional Research Service, *A legislative History of the Clean Air Act Amendments of 1990, Prepared for the Committee on Environment and Public Works,* 103rd Cong. (1993) (S. Prt. 103–38, Vol. I at 46 n.1). To the extent the two provisions conflict with one another, EPA is entitled to deference under *Chevron U.S.A., Inc. v. Natural Res. Def. Council,* 467 U.S. 837, 843–44 (1984) in resolving the conflict. *See Scialabba v. Cuellar de Osorio,* 134 S. Ct. 2191, 2203 (2014) (where "internal tension" in provision "makes possible alternative reasonable constructions, . . . *Chevron* dictates that a court defer to the agency's . . . expert judgment about which interpretation fits best with, and makes the most sense of, the statutory scheme.") (Kagan, J., plurality); id. at 2228 ("before concluding that Congress has legislated in conflicting and unintelligible terms," "traditional tools of statutory construction" should be used to "allow [the provision] to function as a coherent whole") (Sotomayor, J. dissenting). As discussed below, EPA's interpretation of the statute is reasonable and consistent with the text, history, purpose, and structure of section 111(d), and thus merits *Chevron* deference.

as an "air pollutant . . . emitted from a source category which is regulated under section 112."

In construing this provision, it is necessary to consider "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."[61] Considered by itself, the House language is ambiguous. One key source of ambiguity is the meaning of the phrase "regulated under section 112." To determine whether section 112 "regulate[s]" existing sources of carbon dioxide, it is necessary to parse the "what" of the term "regulate[s].".[62] It is not facially clear whether this language exempts an existing source of carbon dioxide from regulation under section 111(d) when the source is subject to *any* requirement under section 112, or specifically when it is subject to a requirement under section 112 *with respect to its carbon dioxide emissions*.[63]

The textual ambiguity is resolved when the House-originated language is read in light of "the specific context in which that language is used, and the broader context of the statute as a whole."[64] Reading the House-originated language to bar section 111(d) regulation of non-HAPs from any source category regulated under section 112 does not make sense in the immediate context in which the language appears. The House language modifies the phrase "any air pollutant" not the phrase "any existing source"—and appears alongside two other subclauses that exclude certain air pollutants from regulation under section 111(d). The natural inference is that the House language excludes a set of air pollutants, not a set of sources.

The same conclusion follows from consideration of the broader statutory context. The Senate-originated amendment,[65] unambiguously exempts only HAPs from regulation under section 111(d). The natural inference is that the House-originated amendment performs a similar or identical function, since the simplest explanation for the conferees' failure to reconcile the two amendments is that, in the absence of any substantive difference between the position of the two chambers, the conferees failed even to notice the presence of two amendments to the same clause. Indeed, this view is supported by the conclusion that the two provisions are "duplicative."[66]

Lending additional support to this position is section 112(d)(7) of the statute, also enacted in 1990. Section 112(d)(7) provides that "[n]o emission standard or other requirement promulgated under [section 112] shall be interpreted . . . to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section [111]" or "other authority of [the Clean Air Act]."[67] This provision is clear evidence that Congress did not intend regulation of a source's HAP emis-

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[61] *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 341 (1997).

[62] Cf. *Rush Prudential HMO, Inc.* v. *Moran*, 536 U.S. 355, 366 (2002) (to determine whether a law "regulates insurance," it is necessary to "pars[e] . . . the 'what'" of the term "regulates")

[63] Cf. *Rush Prudential*, 536 U.S. at 366 (a law does not "regulate[s] insurance" unless "insurers are regulated *with respect to their insurance practices*") (emphasis added).

[64] *Robinson*, 519 U.S. at 341.

[65] Clean Air Act Amendments of 1990, Pub. L. 101–549, § 302(a).

[66] Congressional Research Service, *A legislative History of the Clean Air Act Amendments of 1990, Prepared for the Committee on Environment and Public Works*, 103rd Cong. (1993) (S. Prt. 103–38, Vol. I at 46 n.1).

[67] 42 U.S.C. § 7412(d)(7).

sions under section 112 to displace regulation of that source's other emissions under section 111(d). On the contrary, Congress fully expected identical sources to be regulated under sections 111 and 112 at the same time; otherwise, section 112(d)(7) would make no sense.

Furthermore, section 111(d) must be interpreted in a manner that is consistent with the Clean Air Act's "structure and design." [68] Section 111(d) is one of three major regulatory programs that Congress enacted in 1970 to control air pollution from existing industrial sources.[69] Each program—the NAAQS program under sections 108–110, the HAP program under section 112, and section 111(d)—was designed to regulate a specific class of air pollutants. Together, the three programs were designed to provide a comprehensive regulatory scheme for existing sources with "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." [70]

Section 111(d) would be largely eviscerated if section 111(d)(1)(A)(i) were construed to exempt *all emissions* (HAP and non-HAP alike) from any source subject to regulation under section 112 with respect to its HAP emissions, since as Congress intended, every large industrial source category is subject to regulation under section 112 for its HAP emissions.[71] The majority's view of section 111(d) would destroy the conscientious design of the Clean Air Act and would, perversely, change a gap-*filling* provision—section 111(d)—into a gap-*creating* provision. This would turn the law on its head.

There is simply no evidence that Congress intended to abandon the Clean Air Act's seamless, tripartite regulatory framework in 1990. To the contrary, the legislative history of the 1990 amendments "reflects Congress' desire to require EPA to regulate more substances," not fewer.[72] The regulatory history of section 111(d) is in accord with the legislative history. EPA has regularly used section 111(d) to regulate non-HAP emissions from sources that were simultaneously regulated with respect to their HAP emissions under section 112.[73] Moreover, in the four presidential administrations since the 1990 Amendments, EPA has consistently interpreted section 111(d) to authorize and require the regulation of any air pollutant not regulated under the NAAQS or HAP program.[74]

The majority's interpretation of the House language would also produce absurd results. Under that reading of the statute, EPA would only be prohibited from issuing section 111(d) regulations for existing power plants if a section 112 rule for those sources were

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[68] *Util. Air Regulatory Grp.* v. *EPA*, 134 S. Ct. 2427, 2442 (2014).

[69] *See* 40 Fed. Reg. 55,240 (Nov. 17, 1975).

[70] Senate Committee on Public Works, *National Air Quality Standards Act of* 1970, 91st Cong. (1970) (S. Rept. 91–1196); *see* also 40 Fed. Reg. 55,240 (Nov. 17, 1975).

[71] *See* 42 U.S.C. § 7412(c)(1) (requiring the listing of "all categories and subcategories of major sources and area sources" of HAPs).

[72] 70 Fed. Reg. 15,994, 16,032 (Mar. 29, 2005).

[73] *See* 70 Fed. Reg. at 16,032; *see also Amicus* Br. of Inst. For Policy Integrity ("IPI Brief") at 10–11, *West Virginia* v. *EPA*, No. 14–1146 (D.C. Cir. 2015) (discussing municipal solid waste landfills).

[74] *See* IPI Brief at 8–22; *see also* U.S. Environmental Protection Agency, *Memorandum of EPA General Counsel Jonathan Z. Cannon, to EPA Administrator Carol M. Browner, Re: EPA's Authority to Regulate Pollutants Emitted by Electric Power Generation Sources* at 3 n.2 (Apr. 10, 1998) (stating that EPA's duty to regulate under section 111(d) extends to any dangerous air pollutant "except criteria pollutants or hazardous air pollutants").

already finalized and in effect. It would not, however, prohibit EPA from issuing section 111(d) regulations *first* and *subsequently* regulating those sources under section 112. In other words, under the majority's view, if EPA waited until the day after it finalized power plant CO_2 regulations to issue the Mercury Air Toxics Standards (MATS) rule, the agency would be within its legal rights; but if it issued the MATS rule the day *before* it finalized power plant CO_2 regulations, it would relinquish its authority to promulgate the latter regulation. This is, of course, a nonsensical outcome, and illustrates in stark terms why the majority's reading of the Clean Air Act is untenable.

Also debunking the majority's interpretation of the statute is the Supreme Court's opinion in *American Electric Power Co. v. Connecticut (AEP)*.[75] In *AEP*, Connecticut and other states urged the recognition of a federal common law cause of action that would allow states injured by climate change to sue the owners of existing coal-fired power plants, the nation's largest emitters of CO_2. The companies insisted that the nuisance remedy was not available because Congress, by enacting the Clean Air Act, had conferred authority on EPA to regulate carbon dioxide emissions, including from petitioners' power plants. The companies emphasized that the Clean Air Act is a "comprehensive regulatory scheme," and pointed to language from the sponsors of the 1990 amendments who "repeatedly characterized the Act as 'comprehensive,' and commented on its expansive reach."[76]

The petitioners' briefs in *AEP* pointed specifically to EPA's authority to regulate existing power plants under section 111(d),[77] and highlighted the absence of any "'gap' in the statutory system with respect to the particular emissions restrictions plaintiffs seek."[78] The Supreme Court, by an 8–0 vote, adopted industry's argument, holding that section 111(d) "speaks directly to emissions of carbon dioxide from the defendants' power plants,"[79] thereby displacing federal common law.

In a footnote, the *AEP* Court wrote that "EPA may not employ [section 111(d)] if existing stationary sources of *the pollutant in question* are regulated under the [NAAQS] program . . . or the [HAP] program."[80] The Court understood the relevant question to be whether existing sources are regulated with respect to the "pollutant in question" under the NAAQS or HAP programs. Crucially, the Court treated the NAAQS exclusion and the HAP exclusion as parallel limits on EPA's authority. The NAAQS exclusion clearly excludes a class of pollutants, not sources, from regulation under

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[75] *American Electric Power Co.* v. *Connecticut* ("*AEP*"), 131 S. Ct. 2527 (2011).

[76] Petitioner's Brief at 9, 42, *Am. Elec. Power Co.* v. *Connecticut*, 131 S. Ct. 2527 (D.C. Cir. No. 10–174) (2011) (internal citations omitted). *See also Amicus* Br. of Edison Elec. Inst., *et al.*, in Support of Pets. At 9, *Am. Elec. Power Co.* v. *Connecticut*, 131 S. Ct. 2527 (D.C. Cir. No. 10–174) (2011) (brief of leading power industry associations, stating: "In the case of air pollutants that are not regulated under certain other provisions of the Clean Air Act, such as [greenhouse gases], the Act then 'requires the States to determine appropriate control limits for *existing* sources for which there is an NSPS.'") (internal citation omitted).

[77] Pet's Br. at 6–7, 47,

[78] Reply Br. at 17, *Am. Elec. Power Co.* v. *Connecticut*, 131 S. Ct. 2527 (D.C. Cir. No. 10–174) (2011).

[79] 131 S. Ct. at 2537.

[80] *Id.* at 2538 n.7 (emphasis added).

section 111(d).[81] The Court's syntax indicates that it understood the HAP exclusion to establish a parallel, pollutant-based exclusion. Thus, the Court's footnote is properly read to provide that "EPA may not employ [section 111(d)] if existing stationary sources of the pollutant in question are regulated" *with respect to that pollutant* under the NAAQS program or HAP program. Had the Court *not* intended the HAP exclusion to be pollutant-specific, a key premise of its unanimous merits holding—EPA's authority to regulate power plants' carbon dioxide pollution under section 111(d)—would have been negated, since power plants' emissions of criteria pollutants have been regulated since the 1970s.

Notably, the section 112(n)(1) rule regulating power plants' HAP emissions (known as the Mercury and Air Toxics Standards rule) was well advanced during the briefing in *AEP*,[82] and the proposed rule was signed by the Administrator more than a month before the *AEP* oral argument and more than three months before the Court's decision came down. No party suggested in *AEP* that EPA's authority to regulate carbon dioxide would go away with the promulgation of a section 112(n)(1) standard for power plants.[83] It is highly implausible that the Court believed the statutory authority underlying its displacement analysis would disappear within months if EPA finalized the emission standards for power plants' HAPs emissions that it had already proposed.

Despite the text, structure, and history of section 111(d), the consistent practice of EPA with regard to that provision, and the Supreme Court's holding in *AEP*, the majority maintains that EPA may not regulate CO_2 emissions from existing power plants under section 111(d). Not only is the majority's view of the House-originated language incorrect, its argument fails independently unless the Senate-originated language is simply excised from the statute as a "drafting error" or a non-substantive "conforming amendment." The majority report cites no cases, precedents, or other legal authorities holding that a duly enacted provision in the Statutes at Large can be disregarded in this manner. On the contrary, the Supreme Court has instructed that courts must "give effect, if possible, to every word Congress used" when construing a statute.[84] The Court has also admonished against "plac[ing] more weight on the 'Conforming Amendments' caption than it can bear."[85]

Furthermore, there is no evidence that the Senate amendment was adopted in error. A scrivener's error is "a mistake made by someone unfamiliar with the law's object and design,"[86] which produces language with "no plausible interpretation."[87] In contrast, the Senate's eighteen-word amendment makes it clear that substituting "112(b)" for "112(b)(1)(A)" was precise and intentional, not a typographical error. The amendment maintains section 111(d)'s prior function in the Act's comprehensive regulatory scheme and

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[81] *See* 42 U.S.C. §7411(d)(1)(A)(i (providing that EPA may regulate "any air pollutant . . . which is not included on a list published under section [108(a)]").

[82] *Am. Elec. Power Co.* v. *Connecticut*, 131 S. Ct. 2527 (D.C. Cir. No. 10–174) (2011).

[83] *Id.*

[84] *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979).

[85] *Burgess* v. *United States*, 553 U.S. 124, 135 (2008). *See also United States* v. *R.L.C.*, 503 U.S. 291, 305 n.5 (1992) (refusing to disregard the effects of a "technical amendment" because "a statute is a statute, whatever its label").

[86] *U.S. Nat'l. Bank of Or.* v. *Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 462 (1993),

[87] *Williams Co.* v. *FERC*, 345 F.3d 910, 913 n.1 (D.C. Cir. 2003).

produces a perfectly sensible result. Moreover, the drafting history of the 1990 amendments indicates that the conferees restored the Senate-originated language to the final bill after it emerged from the House.

In any case, the Chafee-Baucus Statement provides no support for the majority's position. The statement says nothing to suggest that Congress intended to create a gap in the pre-existing comprehensive coverage of all dangerous air pollutants. The most plausible explanation for this silence is that Chafee and Baucus saw no difference in meaning between the Senate and House provisions and believed them consistent with the "no gaps" policy in place since 1970.

For these reasons, the majority is incorrect to assert that EPA may not regulate CO_2 emissions from existing power plants due to the earlier promulgation of the MATS rule. On the contrary, the Clean Air Act directs the agency to control all of the dangerous air emissions from existing major sources such as power plants. The Clean Power Plan is well within EPA's authority under section 111(d), and arguments to the contrary miss the mark.

Other legal arguments

The majority report also raises other legal arguments against the Clean Power Plan, including an argument that EPA may not take a system-wide approach to regulating greenhouse gases from electric generating units. EPA has addressed this issue at length in its Legal Memorandum.[88]

Clean Air Act section 111 defines the term "standard of performance" as "a standard for emissions of air pollution which reflects the degree of emission limitation achievable through the best system of emission reduction . . . which the Administrator determines has been adequately demonstrated."[89] That definition is clearly broad enough to encompass the four building block approach contemplated by the proposed EPA Clean Power Plan. As EPA notes in its Legal Memorandum, when each component term of "system of emission reduction" is given its ordinary meaning, the overall term is reasonably defined as "any set of things that reduces emissions."[90]

Moreover, section 111(d) makes clear that the procedure governing submission of state 111(d) plans shall be "similar" to the procedure governing submission of SIPs under Clean Air Act section 110.[91] Section 110, in turn, makes clear that such plans may include "economic incentives such as marketable permits or auctions of emission allowances."[92] Thus, it is not only clear that EPA would have authority to consider the use of such emission reduction methods, but also, there is a strong argument that EPA may be required to consider such methods in setting the appropriate emission limit under section 111(d).

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[88] U.S. Environmental Protection Agency, *Legal Memorandum for Proposed Carbon Pollution Emission Guidelines for Existing Electric Utility Generating Units* (June 2, 2014) (online at *www2.epa.gov/sites/production/files/2014–06/documents/20140602–legal-memorandum.pdf*).

[89] *Id.*

[90] *Id.* at 51.

[91] Clean Air Act § 111(d)(1).

[92] Clean Air Act § 110(a)(2)(A).

In the legislative history of the 1977 amendments, Congress indicated that EPA should consider beyond-the-fence measures in regulating under section 111. For example, the legislative history instructed that EPA should consider "oil desulfurization/denitrification *at the refinery*" in establishing emission standards for oil-fired power plants.[93] The Conference Committee was in agreement: EPA should "give credit for accepted minemouth and other precombustion fuel treatment processes, whether they occur at, or are achieved by, the source or by another party."[94] Thus, Congress specifically contemplated that section 111 standards would reflect the availability of credits for off-site activities implemented by third parties, even during the years (1977–1990) when the statute required standards for new sources to reflect the application of a "*technological* system of continuous emission reduction."

In addition there is precedent in EPA rulemakings under the Clean Air Act for reductions that take place at off-site locations, such as coal pre-treatment requirements for coal fired electric generating units.[95] Furthermore there is also precedent for crediting zero emission output sources in an averaging plan.[96]

In short, EPA's proposed rule relies on a system-based approach that is grounded in the language of the statute and for which there is ample authority and precedent under the Clean Air Act and in EPA rulemakings that have been upheld on judicial review. There is no reason to expect that EPA's approach will not be upheld.

Legislation addressing a proposed rule

On June 9, 2015, the United States Court of Appeals for the District of Columbia Circuit denied the Petitions for Review of EPA's proposed Clean Power Plan filed by the Murray Energy Corporation and the State of West Virginia.[97]

Although most of the legal arguments set forth in the majority report were briefed in that case, the rationale for the court's decision was very simple. The court declined to review a proposed rule. As Judge Kavanagh noted in his opinion:

> EPA has not yet issued a final rule. It has issued only a proposed rule. Petitioners nonetheless ask us to jump into the fray now. They want us to do something they candidly acknowledge we have never done before: review the legality of a proposed rule. But a proposed rule is just a proposal. . . . We deny the petitions for review and the petition for a writ of prohibition because the complained of action is not final.[98]

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[93] U.S. House of Representatives, Conference Report, *Clean Air Amendments of 1977*, at 130, 95th Cong. (Aug. 3, 1977) (H. Rept. 95–564).

[94] U.S. House of Representatives, Conference Report, *Clean Air Amendments of 1977*, at 130, 95th Cong. (Aug. 3, 1977) (H. Rept. 95–564).

[95] U.S. Environmental Protection Agency, *New Stationary Sources Performance Standards; Electric Utility Steam Generating Units*, 44 Fed. Reg. 33580, 33581 (June 11, 1979).

[96] *See* U.S. Environmental Protection Agency, *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 77 Fed. Reg. 62624, 62627–28 (Oct. 15, 2012). *See also* U.S. Environmental Protection Agency, *Joint Technical Support Document: Final Rulemaking for 2017–2025 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards* at 3–7 (2012) (crediting of zero emission vehicles).

[97] See *In Re Murray Energy Corporation* v. *EPA*, No 14–1112, Slip op. (D.C. Cir. 2015)

[98] *In re Murray Energy*, slip op. at 6

H.R. 2042 has the same problem. The rule is not yet final. H.R. 2042 seeks to have Congress legislate to address a proposed rule, not a final rule. It would be extraordinary enough for Congress to pass legislation extending by law the implementation dates of a final EPA rule and explicitly giving the states the ability to disregard federal law. However, here, Congress would be acting in similar fashion with regard to a proposed rule. It is entirely possible that EPA will act in the final rule to address many of the issues that are raised in the majority report and that the projected dire impacts will either be greatly mitigated, eliminated or proven to be non-existent in the final rule. Therefore it would be irresponsible and a waste of time for the Congress to act to legislate against EPA's proposed Clean Power Plan.

As Ranking Member Pallone has stated: "this legislation is not only dangerous, but also premature, unnecessary and poorly conceived. It asks us to legislate to address phantom problems in a rule that has not yet been finalized and it gives individual governors the unfettered ability to thumb their nose at the Clean Air Act.[99]

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

FRANK PALLONE, Jr.,
Ranking Member, Committee on Energy and Commerce.
BOBBY L. RUSH,
Ranking Member, Subcommittee on Energy and Power.

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[99] Statement of Ranking Member Frank Pallone, Jr. Subcommittee on Energy and Power Markup of H.R. 2042, Ratepayer Protection Act April 22, 2015