

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF A RULE SUBMITTED BY THE ENVIRONMENTAL PROTECTION AGENCY RELATING TO “CARBON POLLUTION EMISSION GUIDELINES FOR EXISTING STATIONARY SOURCES: ELECTRIC UTILITY GENERATING UNITS”

NOVEMBER 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.J. Res. 72]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the joint resolution (H.J. Res. 72) providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units”, having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

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PURPOSE AND SUMMARY

H.J. Res. 72 was introduced by Rep. Ed Whitfield (R-KY) on October 26, 2015. The joint resolution provides for congressional disapproval of a rule submitted by the Environmental Protection Agency relating to “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units.”

BACKGROUND AND NEED FOR LEGISLATION

On October 26, 2015, Subcommittee on Energy and Power Chairman Whitfield introduced H.J. Res. 72 pursuant to the Congressional Review Act.¹ This joint resolution would disapprove the Environmental Protection Agency’s (EPA) recently published rule establishing guidelines to regulate carbon dioxide (CO₂) emissions from existing fossil-fuel fired power plants, referred to by the agency as its “Clean Power Plan” or “111(d) Rule.”² This rule, together with EPA’s final rule for new fossil-fuel fired power plants, was issued pursuant to the President’s “Climate Action Plan” and an accompanying Presidential Memorandum.³ These two rules would put in place an unprecedented regulatory structure throughout the U.S. electricity sector, effectively imposing renewable energy and cap-and-trade mandates similar to those in the Waxman-Markey cap-and-trade legislation that failed in 2010.⁴

H.J. Res. 72 would specifically disapprove of EPA’s CO₂ regulations for existing power plants, referred to by the agency as its “Clean Power Plan” or its “111(d) Rule.” Under this rule, EPA interprets section 111(d) of the Clean Air Act (CAA), a rarely invoked provision, to allow the agency to force a massive shift in the United States from coal-fired generation to renewable energy, primarily wind and solar. This rule reflects an unprecedented attempt by the EPA to change the way electricity is generated, transmitted, and consumed in the United States by asserting new regulatory authorities over state electricity decision-making.

Under the 111(d) rule, states would be required to submit individual or regional energy compliance plans to be approved by the EPA in order to meet predetermined CO₂ emissions caps set by the agency for each state’s electricity sector. For states that fail to submit a satisfactory plan, the electric generating units in those states would become subject to a “Federal Plan” under which the agency

¹The Congressional Review Act is set forth in 5 *U.S.C.* 801–808.

²The EPA’s final rule for existing power plants is entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units” and was published in the Federal Register at 80 Fed. Reg. 64662 (Oct. 23, 2015).

³The EPA’s final rule for new power plants is entitled “Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units,” was published in the Federal Register at 80 Fed. Reg. 64510 (October 23, 2015). The Climate Action Plan is available at <https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf> and the Presidential Memorandum dated June 25, 2013 is available at <https://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards>.

⁴See H.R. 2454, the “American Clean Energy and Security Act of 2009” (111th Cong. 2009). In 2009, the House only narrowly passed the measure (219–212), and it was never considered by the Senate.

has proposed it would implement a federal regulatory cap-and-trade program.⁵

The rule unquestionably seeks to put in place regulatory cap-and-trade for the electricity sector. The rule includes detailed provisions related to emissions trading, credits, allowances, monitoring and verification requirements, recordkeeping and reporting and “trading-ready” plans. In the final rule, the agency explicitly states: “the EPA believes it is reasonable to anticipate that a virtually nationwide emissions trading market for compliance will emerge.”⁶

The costs of implementation of this new regulation will be in the billions of dollars annually according to EPA’s own estimates. In the Regulatory Impact Analysis (RIA) accompanying the final 111(d) Rule, EPA estimates costs to range from \$1.4 billion to \$2.5 billion in 2020, \$1.0 billion to \$3.0 billion in 2025, and \$5.1 billion to \$8.4 billion in 2030 (RIA, Table 3–8 at p. 3–22).⁷ In developing these estimates, EPA assumes investments in demand side energy efficiency of \$2.1 billion to \$2.6 billion in 2020, \$16.7 billion to \$20.6 billion in 2025, and \$26.3 billion to \$32.5 billion in 2030 (RIA Tables 3–3 at p. 3–15). These additional costs are offset by projected reductions in electricity demand of up to 7.8 percent by 2030, according to the agency. (RIA, Table 3–2 at p. 3–14). Additionally, according to EPA’s estimates, natural gas use in the power sector may decline by as much as 4.5 percent over the base case in 2030, and coal production for the electric power sector declines by as much as 17 percent by 2025. (RIA, Tables 3–15 and 3–16 at pp. 3–33 to 3–34).

The rule is highly controversial and subject to numerous legal issues, including threshold issues about whether EPA has any authority at all to proceed with the rulemaking.⁸ Whether EPA has authority to promulgate its regulations under section 111(d) has been the subject of extensive oversight and legislative activity before the Committee on Energy and Commerce and its Subcommittee on Energy and Power.⁹

⁵ On October 23, 2015, EPA published a proposed “Federal Plan” that would impose a regulatory cap-and-trade program on electric generating units in states that fail to submit a satisfactory state plan. See “Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule,” 80 Fed. Reg. 64966 (Oct. 23, 2015). The EPA signals that the agency’s preference is that states adopt or participate in state, regional, or nationwide cap-and-trade programs. To this end, the agency has also proposed “Model Trading Rules” that would be presumptively approved for state plants. *Id.*

⁶ 80 Fed. Reg. at 64732.

⁷ The RIA is available at <http://www2.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf>.

⁸ Legal, cost, and implementation issues surrounding EPA’s 111(d) rulemaking were addressed in the Committee’s report on H.R. 2042, the Ratepayer Protection Act, June 19, 2015, available at <https://www.congress.gov/114/crpt/hrpt171/CRPT-114hrpt171.pdf>. Significant legal issues include whether the agency has any authority at all to proceed with the rulemaking under section 111(d) of the Clean Air Act because EPA already regulates electricity generating units under section 112 of the Clean Air Act. *Id.* at pp. 4–7. Even assuming such authority, 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. *Id.* at 7–10. In addition, other questions relate to what legal authority the agency would have to impose the proposed Federal Plan, the consistency of the Clean Power Plan’s approach with state laws or pending legislation, and how the regulations affect the jurisdiction of the Federal Energy Regulatory Commission or jurisdictional issues under the Federal Power Act. *Id.*

⁹ See hearings listed in report below. See also Letter to The Honorable Gina McCarthy dated November 2, 2015 available at <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/Letters/20151102EPA.pdf>; see also, e.g., EPA’s Proposed CO₂ Regulations for Existing Power Plants: Critical Issues Raised in Hearings and Oversight” (Dec. 2014) available at <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/20141216-oversight-series-clean-power-plan.pdf>;

There are also significant issues relating to the potential impacts on electricity prices and electric reliability as well as jobs.¹⁰ A recent analysis of the final rule by NERA Economic Consulting (NERA) estimates that for the period 2022 to 2033, energy sector expenditures would increase by \$220 billion to \$292 billion, with annual compliance costs averaging \$29 billion to \$39 billion.¹¹ NERA projects that “[f]or the overall economy, losses to U.S. consumers range from \$64 billion to \$79 billion on a present value basis over the same time period.” NERA also projects the Clean Power Plan “could potentially generate significant average and ‘peak’ retail electricity rate increases, with most states experiencing double digit rate increases,” including for example:

- 40 states could have average retail electricity price increases of 10% or more;
- 17 states could have average retail electricity price increases of 20% or more; and
- 10 states could have average retail electricity price increases of 30% or more.

While the costs that would be imposed on American ratepayers would be in the billions of dollars, EPA does not project that the rule will produce any meaningful impact on global greenhouse gas emissions. In fact, in the United States, energy related CO₂ emissions have *significantly declined* and according to the Energy Information Administration (EIA), even in the absence of the rule, U.S. energy related CO₂ emissions will remain below 2005 levels through 2040.¹² The U.S. share of worldwide emissions will continue to decline over that period as CO₂ energy related emissions in the developing world are projected to grow to 120 percent above 2005 levels by 2040.¹³

The Attorneys General or state agencies of at least 27 states of the 47 states¹⁴ subject to the rule have challenged this regulation, including Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, Wisconsin, and Wyoming.¹⁵

The Committee has also held dozens of hearings during the 111th, 112th, 113th and 114th Congresses, in which the President’s climate agenda and related EPA rulemakings were addressed and heard from numerous witnesses, including EPA, the Department of Energy, and a wide range of non-governmental witnesses, including climate scientists. Following the announcement of the “Climate Action Plan” in 2013, the Committee’s Subcommittee on Energy and Power invited the President’s Science Advisor, John Holdren, as well as witnesses from the government’s leading climate agencies, including the Office of Science and Technology Policy, National Oceanic and Atmospheric Administration, and the National Aeronautics and Space Administration (NASA); all of these invited witnesses and agencies declined to testify.

¹⁰*Id.* at pp. 10–13.

¹¹See “Energy and Consumer Impacts of EPA’s Clean Power Plan,” prepared by NERA Economic Consulting for the American Coalition for Clean Coal Electricity, November 7, 2015 available at <http://www.nera.com/content/dam/nera/publications/2015/NERA-ACCCE-CPP-Results-Nov72015.pdf>.

¹²See EIA Annual Energy Outlook 2015, Energy-related carbon dioxide emissions available at http://www.eia.gov/forecasts/AEO/section_carbon.cfm.

¹³See EIA, World carbon dioxide emissions by region, available at <http://www.eia.gov/oiaf/aeo/tablebrowser/#release=IEO2013&subject=3-IEO2013&table=10-IEO2013®ion=0-0&cases=Reference-d041117>.

¹⁴At this time, EPA is not setting CO₂ emission performance requirements for Alaska, Hawaii, Guam, or Puerto Rico due to the “lack of suitable data and analytic tools.” 80 Fed. Reg. at 64826. Vermont and the District of Columbia also are not required to submit a state plan because they “do not have affected “electric generating units”. *Id.* at n. 767.

¹⁵See *State of West Virginia et al. v. United States Environmental Protection Agency*, U.S. Court of Appeals for the District of Columbia, Case No. 15–1363 and consolidated proceedings.

What the legislation would do

The legislation provides that Congress disapproves the rule submitted by the EPA relating to “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (published at 80 Fed. Reg. 64662 (October 23, 2015)), and such rule shall have no force or effect. Under the Congressional Review Act, an agency may not issue a rule that is the same or a substantially similar to a rule that has been disapproved through the statutorily prescribed process unless authorized by subsequent legislation.¹⁶

HEARINGS

The Subcommittee on Energy and Power held six hearings relating to EPA’s regulation of existing power plants under section 111(d) of the Clean Air Act. The hearings and witnesses included the following:

- On October 22, 2015, the Subcommittee held a hearing entitled “EPA’s CO₂ Regulations for New and Existing Power Plants: Legal Perspectives” and received testimony from:

- Elbert Lin, Solicitor General of West Virginia;
- Allison D. Wood, Partner, Hunton & Williams, LLP;
- Raymond L. Gifford, Partner, Wilkinson Barker Knauer LLP;
- Richard L. Revesz, Lawrence King Professor of Law, Dean Emeritus, Director, Institute for Policy Integrity, New York University School of Law;
- Emily Hammond, Associate Dean for Public Engagement, Professor of Law, George Washington University School of Law.

- On October 7, 2015, the Subcommittee held a hearing entitled “EPA’s CO₂ Regulations for New and Existing Power Plants” and received testimony from:

- The Honorable Janet McCabe, Acting Administrator, Air and Radiation, U.S. Environmental Protection Agency.

- 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 LLP;
- Art Graham, Chairman, Florida Public Service Commission;
- Kelly Speakes-Backman, Commissioner, Maryland Public Service Commission and Chair, Regional Greenhouse Gas Initiative Inc. Board of Directors;

¹⁶See 5 U.S.C. § 801(b)(2) (“A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.”); see also “The Congressional Review Act (CRA),” Congressional Research Service (Dec. 11, 2014) available at <http://www.crs.gov/reports/pdf/IF10023>; “The Congressional Review Act: Frequently Asked Questions,” Congressional Research Service (April 17, 2015) available at <http://www.crs.gov/Reports/pdf/R43992?source=search>.

- 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 November 3, 2015, the Subcommittee on Energy and Power met in open markup session to consider H.J. Res. 72 and forwarded the bill to the full Committee, without amendment, by a record vote of 15 ayes and 12 nays.

On November 17 and 18, 2015, the Committee on Energy and Commerce met in open markup session to consider H.J. Res. 72. A motion by Mr. Upton to order H.J. Res. 72 reported to the House, without amendment, was agreed to by a record vote of 28 ayes and 21 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. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 42**

BILL: H.J.Res. 72, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units"

AMENDMENT: A motion by Mr. Upton to order H.J.Res. 72 favorably reported to the House, without amendment.

DISPOSITION: AGREED TO, by a roll call vote of 28 yeas and 21 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				Mr. Doyle		X	
Mrs. Blackburn	X			Ms. Schakowsky		X	
Mr. Scalise				Mr. Butterfield			
Mr. Latta	X			Ms. Matsui		X	
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				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. Loeb sack		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	X						
Mrs. Brooks	X						
Mr. Mullin	X						
Mr. Hudson	X						
Mr. Collins	X						
Mr. Cramer	X						

11/18/2015

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.J. Res. 72 provides for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units.”

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.J. Res. 72 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.J. Res. 72 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

At the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

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.J. Res. 72 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.J. Res. 72 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

The legislation provides that Congress disapproves the rule submitted by the EPA relating to “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (published at 80 Fed. Reg. 64662 (October 23, 2015)), and such rule shall have no force or effect.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

DISSENTING VIEWS

Finalized by the Environmental Protection Agency (EPA) on August 3, 2015, the “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 That same day, EPA also finalized a rule limiting carbon pollution from new, modified, and reconstructed power plants under section 111(b) of the Clean Air Act.²

H.J. Res. 72 is part of the Republicans’ ongoing attack on EPA’s Clean Air Act authority to cut carbon pollution and prevent dangerous climate change. If the resolution is enacted, then EPA would not be able to reissue the Clean Power Plan or any rule that is substantially the same.³ This is particularly important since it would block this administration, or any future administration, from taking meaningful action to curb carbon emissions from power plants.

INACCURACIES IN THE MAJORITY’S REPORT

The majority’s report includes a number of false statements, inaccuracies, and exaggerations regarding the Clean Power Plan.

Cooperative federalism

First, the majority’s report claims that the Clean Power Plan represents “an unprecedented attempt by the EPA to change the way electricity is generated, transmitted and consumed in the United States by asserting new regulatory authorities over state electricity decision-making.”⁴ They further argue that “states that fail to submit a satisfactory plan the electric generating units in those states would become subject to a ‘Federal Plan’ under which the agency has proposed it would implement a federal regulatory cap-and-trade program.”⁵

However the claims of EPA taking over a state’s electricity sector are hyperbolic and ignore the history of the Clean Air Act. 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

¹U.S. Environmental Protection Agency, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 80 Fed. Reg. 64662 (Oct. 23, 2015) (Final Rule) (online at www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22842.pdf) (hereinafter Clean Power Plan).

²U.S. Environmental Protection Agency, *Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units*, 80 Fed. Reg. 64510 (Oct. 23, 2015) (Final Rule) (online at www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf).

³5 U.S.C. § 801(b).

⁴Majority Report at 2.

⁵*Id.* at 3.

plants, but EPA is required to step in with a federal 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. Congressional action is not needed to provide a safe harbor for states that cannot—or will not—comply with the requirements of the Clean Power Plan.

Further, environmental groups have noted that:

Regulating air pollution that affects the whole nation . . . lies at the heart of Congress' regulatory powers, and cooperative federalism arrangements addressing such matters are familiar and constitutionally unproblematic . . . If State Petitioners object to the Clean Power Plan, they can decline to participate and leave regulation of power plants' carbon pollution to EPA. But they cannot leverage their option to participate into a basis for thwarting Congress' command that EPA regulate dangerous emissions from power plants.⁶

NERA study

The majority's report also relies heavily on a recent NERA analysis that is flawed in a number of key aspects.⁷ For one, it does not take into account any of the benefits of the Clean Power Plan. Also, as described more fully elsewhere,⁸ the NERA analysis ignores recent studies that show real world investments in energy efficiency programs generate net savings for consumers—efficiency shows up in the NERA study as a net cost—and the NERA analysis significantly overestimates the costs for renewables like wind and solar.

EPA estimates that, as a result of the Clean Power Plan, in 2030 carbon pollution from the power sector will be 32 percent below 2005 levels. In addition, by 2030 emissions of SO₂ from power plants will be 90 percent lower compared to 2005 levels, and emissions of NO_x will be 72 percent lower. EPA estimates the climate and public health benefits are worth an estimated \$34 billion to \$54 billion per year in 2030—far outweighing the costs of \$8.4 billion—and will help avoid up to 3,600 premature deaths and up to 90,000 asthma attacks in children in 2030 alone.⁹

When it comes to the retail price of electricity, while EPA estimates that electricity prices may increase somewhat, average electricity bills will be cut by 7 percent in 2030.¹⁰

The rule's impact on climate change

The majority's report doubles down on the claim that the Clean Power Plan will not have a meaningful impact on global green-

⁶*In re West Virginia*, No. 15–1277 (D.C. Cir., envtl. intervenors response Aug. 2015).

⁷Majority Report at 5.

⁸See e.g. Union of Concerned Scientists, *ACCCE, NERA, and Another Misleading Study about the Clean Power Plan* (Nov. 12, 2015) (online at blog.ucsusa.org/john-rogers/accce-nera-and-another-misleading-study-about-the-clean-power-plan-952?_ga=1.6790970.989006215.1444331667).

⁹U.S. Environmental Protection Agency, *Clean Power Plan By the Numbers* (Aug. 3, 2015) (online at www2.epa.gov/sites/production/files/2015-08/documents/fs-cpp-by-the-numbers.pdf).

¹⁰U.S. Environmental Protection Agency, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, at 3–40 (Aug. 3, 2015) (online at www2.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf).

house gas emissions.¹¹ There is no evidence to support the claim that CO₂ emissions from U.S. coal-fired power plants are an insignificant part of the climate problem. The United States is the world's second largest carbon polluter, responsible for nearly 20 percent of the world's carbon pollution¹² and fossil fuel-fired power plants alone account for roughly a third of our country's CO₂ emissions.

Further, the Clean Power Plan will play a significant role in the fight against climate change. U.S. action alone won't stop catastrophic climate change, but action by the rest of the world without U.S. action also will not succeed, and other countries have an excuse to delay action as long as the United States does as well. Strong U.S. action is an essential part of the global response to climate change. We must act aggressively to reduce carbon pollution, and so must other major emitters. The Clean Power Plan demonstrates U.S. leadership and is key to our effort to secure an ambitious and lasting international climate agreement.

Legal challenges

Finally, the majority's report notes that "[T]he Attorneys General or state agencies of at least 27 states of the 47 states subject to the rule have challenged this regulation."¹³ However, legal challenges to final EPA rules are routine, and 34 states have already indicated they will prepare plans to comply with the rule.¹⁴

CONCLUSION

The history of the Clean Air Act is a history of exaggerated claims that have never come true. In reality, 45 years of clean air regulation have shown that a strong economy and strong environmental and public health protection go hand-in-hand.

EPA's power plant rules are a critical part of our national strategy to reduce carbon pollution and protect the climate. The Clean Power Plan outlines a path to cleaner air, better health, a safer climate, and a stronger economy. H.J. Res. 72 would nullify that rule, and replace it with nothing.

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

FRANK PALLONE, Jr.,
Ranking Member.
 BOBBY L. RUSH.
 ANNA G. ESHOO.
 ELIOT L. ENGEL.
 GENE GREEN.
 DIANA DEGETTE.
 LOIS CAPPES.
 MIKE DOYLE.
 JAN SCHAKOWSKY.

¹¹ Majority Report at 5.

¹² U.S. Environmental Protection Agency, Global Greenhouse Gas Emissions Data (*online at www.epa.gov/climatechange/ghgemissions/global.html*).

¹³ Majority Report at 6.

¹⁴ E&E's Power Plan Hub, Legal Challenges (*online at www.eenews.net/interactive/clean-power-plan#legal-challenge-status-chart*); *See, e.g. Just say no' strategy appears to be crumbling*, E&E News (Oct. 28, 2015) (*online at www.eenews.net/stories/1060027079*).

G.K. BUTTERFIELD.
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