

Statement of Scott H. Segal, Director, Electric Reliability Coordinating Council, on the EPA Proposal to Repeal the Clean Power Plan (CPP), October 16, 2017, 82 Fed. Reg. 48035

Members of the panel, thank you for this opportunity to speak in favor of your proposed rule to repeal the Clean Power Plan. I am Scott Segal and I direct the Electric Reliability Coordinating Council, a group of power companies providing power to millions of consumers across the country. ERCC members operate diverse portfolios of generation capacity, from traditional baseload resources like fossil fuels and nuclear, to a range of other resources including wind, solar, and other renewables. ERCC members work with business and household consumers to improve energy efficiency and otherwise manage their energy use. Due principally to a range of market trends, ERCC members and the rest of the electric industry have experienced marked declines in the carbon intensity of our power production; this is in spite of the fact that the U.S. Supreme Court issued a first-ever stay of an environmental regulation when it stayed the CPP back in February 2016. According to EPA's own data, there has been nearly a 70 percent reduction in criteria pollutants since 1970,¹ And carbon emissions are the lowest they have been in 25 years.²

Declines in carbon emissions principally are the result of market trends like sustained low costs of natural gas, continued investment and market demand for renewables and energy efficiency, concerns expressed by the investment community, and best practices developed by the industry itself. To be sure, regulatory developments at the state and federal government play a role, but these are not the primary movers. ERCC believes that an overly broad, unilateral federal program is not necessary – and worse yet uses federal fiat to remove the flexibility and pragmatism that the marketplace can provide in addressing greenhouse gases. The market achieves a careful balance of continued forward momentum in reducing emissions with the critical need to address consumer demand where it is most acute, and electric reliability and resilience.

The continued interest in alternative energy sources continues in the electric power sector, irrespective of the CPP. This movement is due in part to improvements in cost-effectiveness, state standards, increased demand from commercial and residential consumers, and a generally supportive tax structure.³

Weak Benefits. The value proposition for the CPP is unclear, particularly given its potential to complicate market trends. According to climatologist Paul Knappenberger, “Even if we implement the Clean Power Plan to perfection, the amount of climate change averted over the course of this century amounts to about 0.02 centigrade. This is so small as to be scientifically undetectable and environmentally insignificant.”⁴ When asked by Members of Congress what impact the CPP will have on global temperatures, then-EPA Administrator Gina McCarthy said, “... the impacts of any single action will be small.”⁵

¹ Institute for Energy Research, Response to EPA's Clean Power Plan Repeal Proposal, Oct. 10, 2017, at <http://www.instituteforenergyresearch.org/press/ier-response-epas-clean-power-plan-repeal-proposal/>

² Benjamin Hulac, Progress: U.S. Carbon Emissions Decline, *Scientific American*, Oct. 13, 2016, at <https://www.scientificamerican.com/article/progress-u-s-carbon-emissions-decline/>

³ American Council on Renewable Energy, *The State of Play for Renewable Energy*, June 20, 2017, at http://www.acore.org/index.php?option=com_dtracker&layout=download&sess=737

⁴ Nicolas Loris, U.S. is better off without the Clean Power Plan, *Philadelphia Inquirer*, Oct. 13, 2017 at <http://www.philly.com/philly/opinion/commentary/trump-epa-pruitt-clean-power-plan-obama-20171016.html>

⁵ Testimony before the House Committee on Science, Space and Technology, September 17, 2014. Also, EPA Air

Aside from the indirect effect of CO₂ on global climate, there is no relationship between reduced emissions and improvements in human health. Thus, in order to bolster the case for the CPP, EPA has claimed that co-benefits will accrue to implementation of the proposed rule in the form of reduced emissions of particulate matter (PM). The reason for this is simple; when you shut down a power plant, it no longer has emissions of any kind. However, the Clean Air Act does not authorize EPA to deliberately seek the shutdown of as many power plants as possible. Instead, EPA is double-counting the benefits of reducing particulates governed by other environmental regulations and counting those reductions as benefits of the CPP. Not only does this technique result in skewed cost-benefit assessments, it also rigs the system to impose unnecessary costs on the American people with no improvement to the safety of the public. If EPA is going to regulate carbon emissions, EPA should calculate the benefits of reduced carbon and not use the CPP as a catch-all for its desired air quality scheme.

Reliability Issues. Because of the inherent inflexibility present in the CPP, there is little doubt of potential implementation problems that could result in significant reliability and resilience threats. Complying with the CPP will require a number of different public and private parties to take numerous actions over the next decade to approve, permit, and build hundreds of new generating facilities and thousands of miles of new transmission and pipelines. Whether these tasks can be accomplished in a timely manner will depend upon major and often coordinated actions by FERC, state legislatures, public utility commissions, state environmental regulators, regional grid and transmission operators, reliability organizations, renewable energy developers, and industrial energy users. It will also depend on the extent of organized opposition from environmental groups and others that often oppose the construction of new generating stations, transmission infrastructure, and pipelines – and on federal and state courts that must rule on objections from these groups. Even with a major coordinated effort by all of these parties, there may still be substantial technical, geographical, dispatch, and transmission constraints that pose serious risks to electric reliability.

Electric reliability is a matter of substantial national importance. The independent, non-profit Regional Transmission Organization for New England emphasized the point in no uncertain terms:

A reliable supply of electricity is a foundation of our prosperity and quality of life. Without it, our world literally grinds to a halt – businesses cannot plan and operate productively, hospitals and schools cannot provide their essential services, and residents cannot depend on the electricity they need simply to live their daily lives. Without reliable electricity, the financial and societal costs would be enormous.⁶

Administrator Janet McCabe testified before the House Energy & Commerce Committee last June that “you can’t predict the impact” the CPP will have on climate change-related outcomes. In 2013, Gina McCarthy testified before the House Energy & Power Subcommittee that “it’s unlikely ... any specific one step is going to be seen as having a visible impact on any of those [climate change] impacts.”

⁶ Energy Consumers Relief Act: Legislative Hearing before the Committee on Energy and Commerce, Subcommittee on Energy and Power, U.S. House of Representatives, 113th Cong. at 181 (April 12, 2013) (statement of the Electric Reliability Coordinating Council)(ERCC statement citing ISO-New England and independently concluding, “The downside impacts of reduced electric reliability are substantial and must be taken into account in any responsible analysis” of environmental policy).

According to the Centers for Disease Control and Prevention, the question of adequate electric reliability likewise is “essential for food safety, safe drinking water, and protection against health consequences of extreme heat and cold.”⁷

Economic Costs. The CPP as finally drafted is not without cost to consumers and businesses. Heritage Foundation analysts used a derivative of the federal government’s National Energy Modeling System to estimate just how much the Clean Power Plan would cost Americans by 2035. The tally was frightening:

- An overall average annual shortfall of nearly 400,000 jobs — more than half of them in manufacturing.
- Increases of 13 percent to 20 percent in household electricity expenditures.
- A total income loss of more than \$20,000 for a typical family of four.
- An aggregate loss of over \$2.5 trillion in gross domestic product.⁸

CPP is Illegal. Aside from its few benefits, and potential significant costs, the CPP also violates the Clean Air Act. The rule breaks with decades of precedents by purporting to require commitments beyond the location of the source category itself – moving beyond the so-called fence line in an attempt to transform the Clean Air Act into a roving mandate to do good. More than half the states in the Union petitioned the Supreme Court asserting a strong legal case against the CPP, which the Supreme Court found substantially likely to succeed in 2016.

On another front – the Federal Power Act – ERCC strongly supported an amicus brief of eighteen former state public utility commissioners who represented the interests of consumers in over a dozen states. The Commissioners found a strong incongruity between the CPP and the Federal Power Act as follows:

Lost in the litigation of EPA’s Power Plan is its permanent and irreversible impact on state regulators and state institutions. The Power Plan traduces state utility regulation, the Federal Power Act, current state institutional arrangements, and the regulatory compact. The expansiveness of the “system” EPA deems regulable under the Power Plan eliminates the authority of state institutions. This includes where to regulate utilities, how to regulate utilities, and when to regulate utilities. All of these state institutional prerogatives, and the attendant exercise of states’ historic police powers, become subordinate to the Power Plan’s requirement that state air regulators, with EPA behind them, control the electric generation mix and the dispatch of that generation mix within any given state. EPA’s use of subcategory performance standards does not mitigate these institutional impacts, as the Power Plan’s subcategory performance standards are the product of a nationwide, system-wide resource planning exercise. Rather,

⁷ Letter from Hon. Andrew P. Harris, MD, Member of Congress, et al., to Gina McCarthy, Administrator, U.S. EPA at 2-3 (Mar. 11, 2014).

⁸ Nicolas Loris, Clean Power Plan Did Little to Help the Environment; Good Riddance, April 17, 2017, at <http://www.heritage.org/environment/commentary/clean-power-plan-did-little-help-the-environment-good-riddance>

EPA's Power Plan nullifies the regulatory compact, long held as the basis by which utilities and regulators keep faith, and more important, the electricity flowing. **The only historic role left to state utility regulators is to present customers with the bill for the Power Plan's implementation.**⁹

Replacement Rule. One last note: the EPA has signaled that it intends to query “whether it should issue another [Clean Air Act] rule addressing GHG emissions from existing [electric generating units] and, if so, what would be the appropriate form and scope of that rule.” Therefore, EPA is developing an Advanced Notice of Proposed Rulemaking (ANPRM) that it will issue “in the near future to solicit information on systems of emission reduction that are in accord with the legal interpretation proposed in [the NPRM] (i.e., those that are applicable to and at an individual source), as well as information on compliance measures and state planning requirements.”

While ERCC believes that absent specific guidance in legislation from the U.S. Congress, market principles are the most sound basis upon which to proceed, we nevertheless support the ANPRM process advanced by EPA. Federal guidance of sufficient flexibility, and limited to actions within the fence line, can provide regulatory certainty, diminish frivolous litigation, and can aide in planning.

New Source Review. Also in the category of providing future certainty, EPA should consider appropriate clarification of the so-called New Source Review program. The National Coal Council (NCC), a federal advisory committee to the U.S. Secretary of Energy, reported on the signal importance of improving efficiency of existing power plants: “Improving the efficiency of existing power plants plays an important role in meeting economic and environmental objectives. Improving thermal efficiency can provide two important benefits that lower operating costs: the reduction of fuel consumption and the reduction of emissions.”¹⁰ NCC has found that “the very uncertainty” created by misapplication of NSR “works as a powerful disincentive for utilities . . . to conduct research necessary to develop additional efficiency innovations.” Id. NCC concluded:

Achieving the most significant improvements in efficiency may be deterred by concern that the required equipment modifications and improvements will be characterized a “major modification” under NSR regulations, and result in additional environmental requirements that would be costly and reduce the efficiency gains.¹¹

Former EPA Administrator Christy Whitman also observed that a more reasonable approach to applying NSR “will promote energy efficiency, plant safety, and modernization at refineries, power plants, and other industrial facilities across the country.”¹²

Thank you and I'd be happy to answer any questions you may have.

⁹ The amicus brief can be found on the ERCC website at http://www.electricreliability.org/sites/default/files/media_files/Commissioners%20CPP%20Amicus%20Final-cl.pdf

¹⁰ The Burdens of New Source Review, NATIONAL COAL COUNCIL at 1 (2017).

¹¹ Id. at 2.

¹² Steven E. Hayward, Making Sense of ‘New Source Review,’ AMER. ENTERPRISE INST. ENVTL. POL. OUTLOOK (July-Aug. 2003) at 1.