

# ERCC Briefing Book of Clean Power Plan Comments

January 9, 2015

This briefing book contains useful excerpts and key quotes from comments submitted to the docket for EPA’s Clean Power Plan. This document is incomplete because as of January 9<sup>th</sup>, only 30,000 of the more than 1.6 million comments submitted to the docket have been posted on Regulations.gov. It will be updated going forward to reflect new additions.

Where useful, I split up block text by argument (labeled with bullet-points). Otherwise, consecutive paragraphs represent a continuous quotation from the text of comments.

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## ERCC

### ERCC Comments on EPA's Proposed Clean Power Plan

#### I. ERCC Background & General Concerns

These comments are filed on behalf of the Electric Reliability Coordinating Council (“ERCC”), a group of power-generating companies serving millions of businesses and households across the United States, and dedicated to a balanced energy portfolio that ensures reliable and affordable electric power, an essential prerequisite for the protection of the environment, public health, and the economy. The comments deal with the standards proposed to address carbon dioxide (CO<sub>2</sub>) emissions from existing power plants, also known as the Clean Power Plan (“CPP”). 79 FR 34829 (2014).

#### **As an initial matter, the CPP as currently proposed is illegal.**

- EPA’s Mercury and Air Toxics Standards (“MATS”), issued under Section 112 of the Clean Air Act (“CAA”), pre-empt the Agency’s authority to promulgate the CPP. Section 111(d) of the CAA explicitly stipulates that EPA cannot regulate a “source category” that is already regulated under Section 112. Existing power plants *are* that source category. We would note that despite vigorous protestations from the Agency, this very preemption argument is headed for a merits panel review before the U.S. Court of Appeals for the District of Columbia despite the status of the rule as a proposal. See *In re Murray Energy Corp.*, D.C. Cir., No. 14-1112 (2014). Now would be a good time for the Agency to withdraw the proposal before more time and resources may be wasted.
- Three out of the four “Building Blocks” that EPA used to set States’ emissions targets in the CPP are illegal, because their implementation falls outside the geographic boundaries of the power plant. They are: increased dispatch of natural gas electricity, increased investment in renewable energy, and expanded energy efficiency programs. Section 111(d) authorizes EPA to set an emissions standard at the “source,” not to re-organize the entire U.S. electricity sector in the name of reducing CO<sub>2</sub>. Furthermore, it is outside the decisional ambit of power plant owners to guarantee the success of any of these Statewide programs. EPA’s interpretation of Section 111(d) is nothing less than the creation of a roving federal mandate that usurps the authority of state legislatures, environmental and energy regulators, and the system of regional transmission operators and other system operators that helps to ensure reliable electricity in the United States. For more discussion of this highly disruptive legal theory in practice, see Attachment 7.
- The CAA requires that EPA finalize a rule for new sources before the Agency promulgates a rule for existing sources. A rule for new sources has not been finalized; ergo, the requirements of the statute have not been met. Furthermore, EPA seeks to finalize its rule for modified & reconstructed sources to bypass this requirement, without acknowledging that modified & reconstructed sources only comprise a subset of the broader category of new sources. The Agency must finalize a rule for *all* new sources before utilizing Section 111(d).

- If EPA finds that a State’s 111(d) Plan is unsatisfactory, the CAA requires that EPA implement its own Federal 111(d) Plan. Because of the broad Statewide measures envisioned by the CPP, EPA would then be administering a number of activities for which it lacks both authority and requisite expertise. For instance, EPA has no business delving into the management of electricity dispatch or renewable energy investments. In this sense, the CPP sets the stage for cascading legal and economic disasters. For additional discussion by several States’ attorneys general on the potential for a veritable crisis of federalism as a result of the CPP, see Attachment 1.
- ERCC further agrees with the comments of 17 state attorneys general (State of Oklahoma et al) filed in this docket regarding a further legal infirmity based upon accepted doctrines of federalism. Specifically, the attorneys general at page 22 et seq. point to the jurisprudence of the Federal Power Act (“FPA”). They state, in part, “The question of what role the federal government and its agencies should play in developing energy policy throughout the country has been considered extensively under the Federal Power Act, Congress’s definitive pronouncement on the subject. And while Congress unquestionably did not intend Section 111 as an energy-policy provision at all, assuming arguendo that it were capable of being construed to touch on energy policy issues in some meaningful way, such as what type of resources may be used to generate electricity in different states, how state and regional power grids should dispatch power, retail energy-efficiency measures, and the like, then EPA’s Section 111(d) proposal directly contravenes Congress’s careful decision in the Federal Power Act to preempt only certain aspects of power generation.”

The administrative process by which the CPP was drafted and released has been problematic since day one. First, EPA continues to refuse to release critical modeling runs on the grounds that the assumptions contained therein are proprietary. Without complete information, however, it is impossible to test the veracity of the Agency’s claims about the feasibility of the CPP. Second, EPA did not extend the public comment period for the CPP after releasing a Notice of Data Availability (“NODA”) that contained new information critical to a thorough evaluation of the rule. Specifically, EPA made two additional years of data available that the Agency intends to use in formulating the baseline for energy demand in all fifty States. This new information required stakeholders to completely re-structure their modeling efforts, with no extra time. We would remind the Agency that an “adequate” comment period is required, not only for the proposal but for the NODA as well – particularly when its impact is so significant. The NODA purports to restate the glide path for implementation. Even later, the EPA placed a substantive interpretation of the process for calculating the mass-based approach for demonstrating compliance. Both of these efforts required adequate time to comment; neither received it. See e.g., *Fla. Power & Light Co.v. U.S.*, 846 F.2d 765, 772 (D.C. Cir. 1988).

## **II. Reliability**

The CPP puts the reliability of the U.S. electricity supply at risk. In fact, **a growing chorus of independent experts have expressed their concern for the future of America’s affordable, dependable electricity supply were the CPP to take effect.**

- The National Electrical Reliability Corporation (“NERC”) has stated that “Essential Reliability Services may be strained by the proposed CPP” and called for substantial additional analysis.<sup>1</sup>
- The Midwest Intercontinental System Operator (“MISO”) has stated that the CPP will likely result in “significant reliability violations.”<sup>2</sup> See Attachment 5 for MISO’s detailed analysis on how the CPP will result in an additional 14 GW of early coal plant retirements in the Midwest.
- The chief economist for PJM has stated that the sheer breadth of the CPP’s mandate “makes it impossible for us to understand what we could be facing.”<sup>3</sup> See Attachment 6 for PJM’s detailed analysis on how the CPP will require a major overhaul in the region’s transmission system.
- The Electric Reliability Council of Texas (“ERCOT”) has said that the CPP “is likely to lead to reduced grid reliability.”<sup>4</sup> Texas Public Utility Commissioner Kenneth Anderson’s testimony to this point is available in Attachment 3.
- The Southwest Power Pool (“SPP”) “anticipates that there will be significant reliability impacts as a result of compliance.”<sup>5</sup>

Because every independent non-partisan analysis by system operators agrees that the CPP may threaten electric reliability, EPA should take these warnings seriously and reconsider its proposed rule. For the ERCC’s own comprehensive analysis on the reliability implications of the CPP, with particular troubling implications for RTO/ISO markets, see Attachment 7.

**Putting electric reliability at risk entails serious legal and public policy consequences. Electrical outages endanger economic growth, and have a demonstrable negative effect on public health.** In a letter to EPA Administrator Gina McCarthy, health care professionals who also serve as Members of Congress expressed their shared view that “the public health consequences associated with stable electricity cannot be overstated.”<sup>6</sup> In particular, the letter refers to the importance of a reliable electricity supply to moderate the impacts of unemployment, disease, extreme weather, and food safety, among other benefits. Putting these public benefits at risk is undesirable and wrong, especially when the alleged benefits associated with the CPP are tenuous and unverifiable.

EPA needs to carefully consider the consequences of policies that may not allow for a flexible and reliable supply of electricity, because the impacts of reliability problems can be devastating.

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<sup>1</sup> “Potential Reliability Impacts of EPA’s Proposed Clean Power Plan.” NERC. November 2014.

<sup>2</sup> “Transmission Reliability Impacts due to the proposed EPA regulations: A Preliminary Assessment.” MISO. November 12, 2014.

<sup>3</sup> “Flexibility and its implications dominate NARUC talk on EPA carbon plan.” Energywire. July 14, 2014.

<sup>4</sup> “ERCOT Analysis of the Impacts of the Clean Power Plan.” ERCOT. November 17, 2014.

<sup>5</sup> “Before the Public Service Commission of the State of Missouri in the Matter of an Investigation of the Cost to Missouri’s Electric Utilities Resulting from Compliance with Federal Environmental Regulations Responsive Comments Of Southwest Power Pool, Inc.” File No. EW-2012-0065. September 16, 2014.

<sup>6</sup> “Re: Alleged Health Benefits from Carbon Regulations.” March 11, 2014.

[http://www.electricreliability.org/sites/default/files/media\\_files/Doc%20Caucus%20EPA%20ltr.pdf](http://www.electricreliability.org/sites/default/files/media_files/Doc%20Caucus%20EPA%20ltr.pdf).

The downside impacts of reduced electric reliability are substantial and must be taken into account in any responsible analysis of the proposed rule. As ISO New England has stated:

“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.”<sup>7</sup>

The Institute of Electrical and Electronics Engineers of the U.S. (IEEE-USA) has further observed that even minor disruptions in the electric power grid can sometimes lead to catastrophic ‘cascading’ blackouts, and that the loss of a single generator can result in an imbalance between load and generation. The resulting blackouts cause incalculable economic damage. For example, the direct costs to high-technology manufacturing in the San Francisco Bay Area alone during the California blackouts alone ran as high as **one million dollars a minute** due to lost production, and the relatively brief Northeast blackout of 2003 cost business about \$13 billion in lost productivity.<sup>8</sup>

Last winter, the cold weather phenomenon known as the “polar vortex” made it clear that coal-fired generation, much of which is currently scheduled to be retired as a result of EPA rules, is vital to the reliability of our electricity supply. In some areas, coal-fired plants thought to be obsolete were discovered to be essential to reliability, and one of the nation’s largest electricity generators reported that **89 percent of the coal-fired generation slated for retirement by 2015 as a result of EPA rules was needed to supply electricity during the cold weather.** These events were not isolated, as electricity generators in Texas and the Southeast faced extreme demands and had to take measures to ensure that coal-fired generation was available, even as those plants faced retirement in the coming years.

The potential legal outcomes associated with reliability disruptions are also severe. Under the FPA, the Chair of the Federal Energy Regulatory Commission (“FERC”) and the Secretary of Energy are empowered to mandate emergency power plant operations to guarantee a consistent, reliable power supply. In fact, FERC Chair Cheryl LaFleur has recently stated in regards to the CPP, “Reliability is not an option, the lights are going to stay on...”<sup>9</sup> On the other hand, States’ 111(d) Plans under the CPP will be federally enforceable via citizen suits. Power plant owners might be trapped between lawsuits and federal enforcement actions, all because EPA neglected to adequately consider the implications of the CPP on our nation’s electricity supply. See Attachment 2 for a detailed discussion on reliability by the U.S. Government Accountability Office, as well as several FERC Commissioners.

### **III. Cost**

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<sup>7</sup> [http://www.iso-ne.com/nwsiss/grid\\_mkts/elec\\_works/oview\\_brochure.pdf](http://www.iso-ne.com/nwsiss/grid_mkts/elec_works/oview_brochure.pdf) (Accessed June 20, 2012)

<sup>8</sup> G.F. McClure, Electric Power Transmission Reliability Not Keeping Pace with Conservation Efforts, Today’s Engineer (Feb. 2005) available at: <http://www.todaysengineer.org/2005/Feb/reliability.asp> (accessed June 20, 2012).

<sup>9</sup> “FERC tasked with reliability, not writing carbon rule – LaFleur.” Greenwire. November 7, 2014.

The CPP will impose **tremendous costs on the U.S. economy and the American people.**<sup>10</sup> Analysis by NERA Economic Consulting anticipates the CPP will result in an additional 45 gigawatts of coal plant retirements between 2017 and 2030, resulting in **an average nationwide electricity rate hike of 12 percent.**<sup>11</sup> EPA's own analysis concedes that rate hikes in the range of 6 to 7 percent by 2020 are likely, assuming all the component parts of the CPP are feasible in all instances. The Agency also left several important cost inputs out of its modeling efforts, including the cost of new electricity and gas transmission projects that will be required to satisfy the requirements of the CPP. All told, both EPA and NERA's estimates of the probable cost-impacts of the CPP are conservative.

Whereas NERA and EPA assumed in their respective calculations that the individual components of the CPP were workable and attainable, there is significant reason to believe that is not the case. In fact, independent experts have suggested that **EPA made serious errors in its methodology for calculating States' emissions targets.** For instance, it seems EPA may have overestimated the degree of heat rate efficiency improvements achievable at power plants by as much as a factor of three. The Agency also made optimistic projections about the feasibility of increased natural gas use, without any allowance in terms of time or rate for the construction of additional pipeline capacity. EPA failed to include the need for excess natural gas capacity to fill-in for intermittent renewable energy resources, even though it is empirically proven that wind and solar generation creates significant peaks and troughs in generation capacity every single day. Finally, EPA made across-the-board assumptions about the future of energy efficiency based entirely on past achievements and not at all on the feasibility of future realizations. Each one of these missteps is a reason to be skeptical about the feasibility of States meeting their emissions targets within the CPP's stringent timetable at less than a truly astronomical cost.

Higher energy prices will produce **a ripple effect throughout the U.S. economy** that will shutter businesses, deter hiring, cause layoffs, increase the price of essential goods and services, and increase the cost-of-living for all Americans. People living on fixed incomes, like senior citizens and the poor, will be hardest hit by rate hikes. Price hikes will also leave these already-vulnerable groups less able to cope with the considerable human costs of lower economic growth. Studies have shown that unemployment, and economic malaise more generally, take an appreciable toll on the health and well-being of Americans by increasing the likelihood of hospital visits and illnesses, raising healthcare costs, and putting stress on families.<sup>12</sup> Any one of

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<sup>10</sup> The failure to adequately estimate plant closures and consequent unemployment may also jeopardize the legal position of the Agency. EPA is currently being sued in federal district court for its failure to implement Section 321 of the Act requiring the Agency to evaluate the job impacts of its rules. *Murray Energy Corp. v. McCarthy*, N.D. W.Va., No. 5:14-cv-00039-JPB, 10/24/14.

<sup>11</sup> The full text of NERA's report is available in Attachment 4.

<sup>12</sup> Higher prices will disproportionately impact vulnerable individuals. In a recent study on Public Opinion on Poverty, it was reported that one-quarter of Americans report having problems paying for several basic necessities. In this study, currently 23% have difficulty in paying their utilities—that is, one out of four Americans." *The American Clean Energy and Security Act of 2009*, 111th Cong. (April 23, 2009) (testimony of Darryl Bassett at 5). Further, African-American and Hispanic families will spend almost twice the amount of after-tax income on energy compared to the average and when viewed as a percentage of total household income. *New Study Confirms Rising Energy Costs Disproportionately Impacting Minority Households*, Reuters, Jul. 25, 2008, available at <http://www.reuters.com/article/2008/07/25/idUS178012+25-Jul-2008+PRN20080725> (accessed June 22, 2012).

these factors is reason enough for EPA to reconsider the spurious notion that CO<sub>2</sub> has any relationship to individuals' well-being, when the Agency has done no analysis to show that is indeed the case.<sup>13</sup> Additional discussion on the cost impact of the CPP on American households, authored by energy expert Eugene Trisko on behalf of the United Mine Workers, is available in Attachment 3.

EPA has suggested that **regional approaches** to implementation can help the proposed rule to gain certain economies of scale that can assist with moderating the cost of rule. As we discuss at greater length in our report at Attachment 7, the CPP specifically mentions the Middle Atlantic Regional Greenhouse Gas Initiative (RGGI) as well as the California cap and trade program. Of course, these existing cap and trade programs are voluntary. But the way the proposed CPP is constructed, emission limitations must be met and enforced at the state level. It remains to be seen whether it would be possible for States to satisfy the proposed rules as written through a regional cap and trade program which simply prices carbon emissions through tradable allowances and is based on a single regional cap. Thus, one of the ways to price carbon would require some states to take a regional approach even if it was not in their customers interests to do so. The proposed CPP requires states to ensure compliance through self-executing laws or regulations which will require mandatory enforcement mechanisms not part of voluntary programs. Such changes are not only inconsistent with today's regional regimes but run counter to EPA's claims regarding state flexibility and potentially even the interstate compact clause of the U.S. Constitution.

#### **IV. Questionable Benefits**

**The CPP will not decrease (and may potentially increase) global CO<sub>2</sub> emissions, resulting in zero beneficial changes to Earth's climate.** EPA believes the CPP will reduce CO<sub>2</sub> emissions from the U.S. electricity sector 30 percent below 2005 levels by 2030. Because the U.S. electricity sector makes up a fraction of U.S. emissions, and because the U.S. accounts for a mere fraction of global emissions, the CPP will reduce the global rate of CO<sub>2</sub> emissions by less than 2 percent in the best case scenario. In the meantime, China's emissions rate is expected to increase by a greater amount than that every year between now and 2030, dwarfing any miniscule reductions achieved in the U.S.<sup>14</sup> Additional discussion on this point by Indiana

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Likewise, elderly households use less per capita energy but still "spend a higher share of their income on energy-related expenditures." Janemarie Mulvey, Impact of rising energy costs on older Americans, CRS Report for Congress No. RS22826 (Mar. 4, 2008), at 3.

<sup>13</sup> ERCC believes the reliance of EPA on the social cost of carbon (SCC) methodology is in error. It is our understanding that expert review of the SCC methodology was provided in the UARG comments. See Dr. Anne E. Smith, Uncertainties in Estimating a Social Cost of Carbon Using Climate Change Integrated Assessment Models, Feb. 26, 2014. Smith found that the SCC development process was closed and non-transparent; that the process deviated from OMB guidelines; that its modeling assumptions did not undergo peer review or public comment; that SCC does not account for threshold effects or nonlinear changes; and was subject to many other flaws. In short, SCC cannot be a basis for framing the analysis of benefits associated with rule.

<sup>14</sup> "China." U.S. Energy Information Administration. February 4, 2014. Further, carbon emissions will jump 34 percent in India by 2020 and double by 2030 under its existing policies, according to the International Energy Agency. Bloomberg report, Nov. 30, 2014. See also, Washington Post, Nov. 12, 2014 (expressing view of critics that recent US-China deal imposes few restrictions on China; also noting, "China completes a new coal plant every eight to 10 days, and while its economic growth has slowed, it is still expanding at a brisk rate of over 7 percent.").

Department of Environmental Management Commissioner Tom Easterly is available in Attachment 3.

EPA concedes the CPP's effect on climate change will be negligible. When asked by Members of Congress what impact the CPP will have on global temperatures, EPA Administrator Gina McCarthy said, "...the impacts of any single action will be small."<sup>15</sup> Unfortunately, the one big impact the CPP might have is making the cost of doing business in the U.S. so high that companies move their operations overseas to countries with fewer environmental regulations than the U.S. In the aggregate, the net effect will be to increase global CO<sub>2</sub> emissions. EPA does no analysis to account for potential economic "leakage" that may occur as a result of the CPP. As a result, the Agency's assessment of the CPP's effect on emissions is incomplete and hopelessly optimistic.

There is substantial evidence that the rule if finalized is likely to cause **substantial leakage**. As noted, increasing energy costs in the United States motivates closure of manufacturing assets and their transfer overseas. As a recent report from the Maguire Energy Institute at the Southern Methodist University put it:

"Numerous studies find that regulatory burdens of this sort imposed on energy prices and energy supply cause plant closures and maximize the potential that manufacturing jobs will move overseas. For each manufacturing job lost, many other dependent jobs will also exit the economy. One in eight private sector jobs rely upon our manufacturing base."<sup>16</sup>

Beyond economic impact, such "leakage" has a direct effect on whether climate policy actually produces benefits. The International Energy Agency has observed that such leakage can result in "the increase in emissions outside a region as a direct result of the policy to cap emission in this region. Carbon leakage means that the domestic climate mitigation policy is less effective and more costly in containing emission levels, a legitimate concern for policy-makers."<sup>17</sup>

Aside from the indirect effect of CO<sub>2</sub> 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 CAA 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

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<sup>15</sup> Testimony before the House Committee on Science, Space and Technology, September 17, 2014. Also, EPA Air 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."

<sup>16</sup> Bernard L. Weinstein, *Proposed EPA Power-Sector Air Rules: Weakening Economic Recovery and Putting America's Most Competitive Manufacturing Industries at Risk* (September 2011) (available at: [http://pressdocs.cox.smu.edu/maguire/SMU\\_Utility\\_MACT\\_Report.pdf](http://pressdocs.cox.smu.edu/maguire/SMU_Utility_MACT_Report.pdf)) at 2.

<sup>17</sup> J. Reinaud, IEA: Climate Policy and Carbon Leakage, Oct. 2008 (available at: [www.iea.org/papers/2008/Aluminium\\_EU\\_ETS.pdf](http://www.iea.org/papers/2008/Aluminium_EU_ETS.pdf)) (accessed June 20, 2012).

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.

EPA in this rule is again captivated by co-benefits that derive from reductions in PM below levels the Agency has determined to be fully protective of human health. However, the Agency refuses to attempt to balance these speculative conclusions against the very-real impacts on human health that arise from economic limitations imposed by the proposal. From a commercial perspective, higher electricity prices will be largely borne by companies in energy-intensive manufacturing, where higher prices will make it more difficult to expand operations and increase employment. These productive industries result in millions of direct and indirect jobs. Placing unnecessary economic constraints on the U.S. economy, in a time of recession, is unwise and detrimental to sound public health policy as, based on decades of research, continuously-employed individuals experienced, on average, an additional life expectancy of four to five years.<sup>18</sup> Comparably, the direct effect of reducing unemployment has been estimated to prevent up to 2,500 premature deaths a year.<sup>19</sup> In contrast, additional unemployment may significantly harm public health. A report to Congress' Joint Economic Committee by Dr. Harvey Brenner showed the impacts of unemployment on public health. Brenner found that a one percent increase in the unemployment rate was associated with a two percent increase in premature deaths. In 2004, Brenner used his econometric models to estimate the public health results from reducing coal-generated electricity. For example, with **a substantial reduction in coal-fired power, Brenner found the result would be between 170,000 and 300,000 premature deaths.**<sup>20</sup>

Placing EPA regulations in a broader public health perspective, it is clear that the proposed rule is not among the wisest of societal investments in addressing premature mortality. President Obama himself has recognized the need to keep cost-effectiveness in mind when he ordered EPA to protect public health and the environment “while promoting economic growth, innovation, competitiveness, and job creation.”<sup>21</sup> Failure to allocate resources based on cost-effectiveness quite literally costs lives. Experts at the Harvard School for Public Health have estimated that **expensive environmental rules save 100 times fewer lives than when the federal government redeployed those assets to address higher risks.**<sup>22</sup> This tremendous differential in health impacts explains why EPA should not be so cavalier in its benefits analysis.

The office that is charged with conducting an independent cost-benefit analysis of EPA’s rules, as per Executive Order 12866, is the White House Office of Management and Budget (“OMB”). Unfortunately, OMB Director Shaun Donovan has spoken publicly in support of the CPP, before

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<sup>18</sup> Morris JK, Cook DG, Shaper AG. (1994), Loss of employment and mortality. *BMJ*;308:1135-9.

<sup>19</sup> Dorling, D. (2009). Unemployment and health: Health benefits vary according to the method of reducing unemployment. *BMJ*, 338, b829.

<sup>20</sup> See Brenner testimony, “The Clean Air Act and Public Health.” US Senate Committee on Environment and Public Works, June 15, 2011. For more data, see Sen. John Barrasso, Staff Report: Red Tape Making Americans Sick - Studies Show EPA Rules Cost Americans Their Jobs and Their Health (Mar. 2012) at [http://www.barrasso.senate.gov/public/\\_files/Barrasso\\_Clean\\_Air\\_Sub\\_Health\\_Effects\\_of\\_Unemployment\\_Final.pdf](http://www.barrasso.senate.gov/public/_files/Barrasso_Clean_Air_Sub_Health_Effects_of_Unemployment_Final.pdf)

<sup>21</sup> E.O. 13653, 76 Fed. Reg. 3821, published Jan. 21, 2011.

<sup>22</sup> Tengs, T.O., et al, (1995) Five Hundred Life-Saving Interventions and Their Cost Effectiveness, *Risk Analysis* 15, 3, 369-90.

the rule is even finalized or reaches his desk for formal review.<sup>23</sup> It seems the Administration is determined to obfuscate and talk past the real world consequences of the CPP, at the cost of American businesses and their customers' well-being. We urge EPA to reconsider imposing such a costly, ineffective regulatory burden on the U.S. electricity system in favor of a more legally defensible, workable approach.

## **V. Conclusion**

The ERCC is pleased to offer these comments. We do not dispute the obligation of EPA to develop and implement sensible, effective regulations. Indeed, we have many times offered to work closely with the Agency on effectively discharging that obligation. However, the current rule is based upon a hurried administrative process and flawed interpretations of statute. Because of its expansive design, crafted without regard to costs, and its unrealistic assumptions about the workings of the U.S. electricity sector, the CPP will maximize costs, suppress economic growth, and undermine reliability. We respectfully ask that the Agency withdraw the CPP. In the absence of withdrawal, we ask that EPA remove the draconian 2020 interim deadlines for compliance that will inflict serious harm on States and the American people in the short-term.

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<sup>23</sup> "The Cost of Climate Inaction." Center for American Progress. September 19, 2014. In yet another potential legal infirmity to the rulemaking process regarding the CPP, eight members of Congress wrote to Director Donovan suggesting that his remarks constitute a basis for recusal from review of the rule.

## NERA

### **“Potential Energy Impacts of the EPA Proposed Clean Power Plan”**

#### [Link to Report](#)

The energy market impacts of the CPP would be substantial in the State Unconstrained (BB1-4) scenario. The annual average electricity sector CO<sub>2</sub> emissions would be reduced by about 22% relative to the reference case (not relative to 2005 emission levels) over the period from 2017 through 2031. Coal unit retirements would increase by about 45 gigawatts (GW). Coal-fired generation would decline by about 29% on average over the period, with natural gas-fired generation increasing by about 5% on average. The Henry Hub natural gas price would increase by about 2% on average. Delivered electricity prices would increase by about 12% on average over 2017 through 2031. However, these figures omit several factors that could add to impacts and costs.

In the State Constrained (BB1-2) scenario, reductions in average annual electricity sector CO<sub>2</sub> emissions over the 2017 through 2031 timeframe would be 40%, almost twice the amount under the State Unconstrained (BB1-4) scenario.<sup>8</sup> Such a constrained compliance scenario would result in very large changes in the electricity system, including 169 GW of coal retirements, a 29% average increase in natural gas prices and a 17% increase in average delivered electricity prices.

Figure ES-2 shows the energy system costs of the two scenarios, expressed as present values in 2014 of spending incurred over the period from 2017 through 2031. The costs are broken down into three categories: (1) costs to serve electricity load; (2) costs of the end-use energy efficiency programs, both to the utilities and to the participants; and (3) costs of non-electricity natural gas use. Under the State Unconstrained (BB1-4) scenario, energy system costs are dominated by the costs to the utilities and to participants of the additional state energy efficiency programs, which are estimated to cost about \$560 billion (in present value) over the period from 2017 through 2031. The reduction in electricity demand over the period 2017 through 2031 results in a net decrease in production costs to meet electricity load that has a present value in 2014 of about \$209 billion; this partially offsets the investment costs of the energy efficiency programs. Higher gas prices are part of the higher cost to serve load, but they also affect consumers who purchase natural gas for non-electricity energy services; the higher consumer cost for direct consumption of natural gas adds another \$15 billion to the present value of the CPP over the years 2017-2031. The net result is that energy system costs would be greater by about \$366 billion in present value terms over the period from 2017 through 2031 under the State Unconstrained (BB1-4) scenario.

## EVA

### **“Energy Market Impacts of Recent Federal Regulations on the Electric Power Sector”**

#### [Link to Report](#)

EVA’s evaluation identified potential oversights in the EPA’s assumptions and analyses across multiple regulations, the combination of which has resulted in the EPA underestimating the actual cost of compliance with these regulations and their impact on energy markets. Additionally, baseline electricity and natural gas prices are expected to rise over the next 10 years. EVA’s study estimated the combined impact of these market factors, recent final regulations, and the proposed CPP and found:

- Annual power and gas costs for residential, commercial and industrial customers in America would be \$284 billion higher (\$173 billion in real terms<sup>4</sup>) in 2020 compared to 2012—a 60% (37%) increase.

- ± Electricity cost increases represent \$177 billion (\$98 billion) and natural gas increases represent \$107 billion (\$75 billion) of the \$284 billion (\$173 billion) cost increase from 2012 to 2020.

- In 2020, annual residential power and gas costs would be \$102 billion (\$87 billion) higher and would continue to escalate in subsequent years.

- Average annual household gas and power bills would increase by \$680 (\$293) or 35% (15%) from 2012 to 2020.

- ± Annual average electricity bills would increase approximately \$340 (\$102) or 27% (8%) from 2012 to 2020.

- ± Annual average home gas heating bills would increase approximately \$340 (\$190) or 50% (28%) from 2012 to 2020.

- The cost of electricity and natural gas will be impacted in large part due to an almost 135% increase in the wholesale price of natural gas (100% in real dollars), from \$2.82/mmbtu in 2012 to approximately \$6.60/mmbtu (\$5.63) in 2020. These increases are due to baseline market and policy impacts between 2012 and 2020 as well as significantly increased pressure on gas prices resulting from recent EPA regulations on the power sector and the proposed CPP.<sup>5</sup>

- On a percentage basis, the U.S. industrial sector would be affected most severely, as its total cost of electricity and natural gas would approach \$200 billion (\$170 billion) in 2020, a 92% (64%) increase from 2012.

- ± Increased operational costs in the industrial sector are of particular concern for energy intensive industries in the U.S. such as aluminum, steel and chemicals manufacturing, which require low energy prices to compete.

± Industrial power consumers would be expected to pass energy cost increases on to their customers, affecting the costs of goods purchased by American consumers over and above increased monthly utility bills.

- The five states that would bear the greatest increases in annual residential power bills are Texas, Mississippi, Pennsylvania, Maryland and Rhode Island. Families in these states would experience average electricity increases of more than \$660 (\$566) annually beginning in 2020 compared with 2012.

± In order to comply with the combined impact of recent power sector regulations and the proposed CPP, these states would face the choice of significantly increasing gas generation and/or significantly increasing wind and solar generation. The reduced operation of coal-fueled generation would render the surviving coal-fired power plants less efficient, producing more CO<sub>2</sub> per megawatt hour (MWh) than if they operated at full output.

- With regard to gas bills, colder weather states in the Northeast and Upper Midwest that use the most natural gas per household would bear the greatest impacts.
- The states that would incur the largest total cost increases on a percentage basis are Texas, Mississippi, Louisiana and North Dakota, averaging more than 115% increase in annual electricity and natural gas bills from 2012 to 2020.

## NERC

### **“Potential Reliability Impacts of EPA’s Proposed Clean Power Plan”**

[Link to Report](#)

Essential Reliability Services may be strained by the proposed CPP: The anticipated changes in the resource mix and new dispatching protocols will require comprehensive reliability assessments to identify changes in power flows and ERSs. ERSs are the key services and characteristics that comprise the following basic reliability services needed to maintain BPS reliability: (1) load and resource balance; (2) voltage support; and (3) frequency support. New reliability challenges may arise with the integration of generation resources that have different ERS characteristics than the units that are projected to retire. The changing resource mix introduces changes to operations and expected behaviors of the system; therefore, more transmission and new operating procedures may be needed to maintain reliability.

## MISO

### **Midwest Independent System Operator**

The interim performance requirements are likely to have a negative impact on electric system reliability. This reliability concern encompasses several components that together define the concept of “reliability.” First, there must be enough energy (measured in megawatt-hours), available to meet demand, on a regional and local level. Second, local transmission ancillary services, such as voltage support (VARs) and frequency support (Hz), are needed to maintain a reliable transmission system and move energy on the electric system. These ancillary services can be provided by electric generating units or components of the transmission system. Third, resource adequacy must be ensured, which means that there must be enough generation capacity (in megawatts) to serve peak demand plus with capacity in reserve to account for unexpected circumstances such as generation and transmission outages (the planning reserve margin). Finally, reliability requires that the operation of generating units and the transmission system are flexible enough to be able to call on generating units and move energy, with ancillary services, where it is needed at a moment’s notice. All of these components must be constantly monitored and balanced by the system operator to ensure reliability of the electric system.

The MISO region already faces identified reliability challenges associated with EPA’s Mercury and Air Toxics Standards (MATS). The MISO region relies on coal-fired generation as the predominant electricity resource. MISO has been conducting quarterly surveys with our generation owners for three-and-a-half years to assess potential impacts of the MATS rule. The survey results show that between 10 and 12 gigawatts of coal-fired generation capacity will retire by 2016 to meet the MATS requirements. As a result, resources available to the MISO region will be at, or potentially below, the planning reserve margin starting in the summer of 2016. MISO expects that resource availability will remain close to the planning reserve margin for the foreseeable future. This erosion of the reserve margin increases the likelihood that MISO will need to manage high electricity demand situations by use of emergency operation procedures. The probability of a loss of load event becomes greater than the MISO region has ever experienced. Furthermore, we know that additional generation retirements needed to comply with the proposed rule are expected to require a one-for-one capacity replacement at the time of the retirement to maintain electric system reliability.

## **PJM**

### **PJM Interconnection**

Questions as to whether implementation of the Proposed Rule will have adverse reliability impacts have engendered much public debate and discussion. Although a variety of analyses, including those produced by the North American Electric Reliability Corporation (“NERC”), can help to identify issues and “bracket” potential reliability exposure, the true reliability impacts of the Proposed Rule cannot be fully evaluated without additional clarity as to the specifics of State Plans making definitive findings in this area difficult.<sup>5</sup> However, there are preventative measures in the form of additional process provisions that should be put in place in the Final Rule to mitigate any future potential impacts to electric system reliability and therefore be clearly available to states and entities charged with ensuring bulk power reliability. Specifically, a “reliability safety valve” that provides a process for undertaking timely reliability assessments at various stages in the process as well as the requisite compliance and/or enforcement flexibility to implement any identified reliability solutions, would achieve this goal. Specific provisions are outlined below and summarized in Attachments A, B and C to these comments and those of the IRC.

## **SPP**

### **Southwest Power Pool**

Specifically, SPP will address three primary areas of concern: 1) the CPP will impact reliability of the bulk electric system; 2) the timing proposed by EPA for compliance is infeasible; and 3) the proposed CPP will have material impacts on the market-based dispatch of electric generating units within the SPP region.

To address these areas of concern, SPP is providing four recommendations: 1) a series of technical conferences jointly sponsored by the EPA and FERC; 2) completion of a detailed, comprehensive and independent analysis of the impacts the proposed CPP will have on the reliability of the nation's bulk electric system; 3) extension of the proposed schedule for compliance in order for the necessary electric and gas infrastructure to be identified and constructed; and 4) adoption of a "reliability safety valve". SPP appreciates the opportunity to submit comments and provides the following explanation of its concerns and recommendations.

## NYISO

### **New York Independent System Operator**

As proposed, the Clean Power Plan presents potentially serious reliability implications for New York. A majority of the electric capacity within New York City is dual-fuel oil/gas steam-fired EGUs. These units are critically important, both due to their location within the transmission constrained New York City area and because they possess dual fuel capability that provides a needed measure of protection against disruptions in the natural gas supply system. Yet the EPA's Building Blocks assume that output from these very facilities could be reduced by over 99%. Such a reduction cannot be sustained while maintaining reliable electric service to New York City. Congress recognized in the Energy Policy Act of 2005 that the population density of the New York City area, the percentage of the population that lives or works in very tall buildings and relies upon underground transportation, and the critical importance of institutions located there intensify the need to maintain the reliability of New York's electric system. The EPA should do the same. 2

The flaws with the Clean Power Plan that would compromise reliability in New York stem from key assumptions within the Building Blocks that are not technically sound and result in CO2 emissions reduction targets for New York that are unreasonable and unworkable within the timeframes provided. The assumptions upon which the Building Blocks are based must be technically and economically sound for the CO2 emissions reductions targets derived from them to be reasonable and consistent with the requirements of a reliable electric system. No amount of flexibility afforded in the manner in which New York State may seek to comply with the Clean Power Plan can make up for requirements that are inherently unreasonable because they are based on flawed assumptions in the Building Blocks.

## ERCOT

### **“Impacts of Environmental Regulations in the ERCOT Region”**

[Link to Report](#)

If ERCOT does not receive early notification of these retirements, and if multiple unit retirements occur within a short timeframe, there could be periods of reduced system-wide resource adequacy and localized transmission reliability issues due to the loss of generation resources in and around major urban centers. Additionally, loss of the reliability services provided by retiring units will strain ERCOT’s ability to integrate new intermittent renewable generation resources. The need to maintain operational reliability (i.e., sufficient ramping capability) could require the curtailment of renewable generation resources. This would limit and/or delay the integration of renewable resources, leading to a delay in achieving compliance with the proposed Clean Power Plan limits.

The Clean Power Plan will also result in increased wholesale and consumer energy costs in the ERCOT region. Based on ERCOT’s analysis, energy costs for consumers may increase by up to 20% in 2020, without accounting for the associated costs of transmission upgrades, higher natural gas prices caused by increased gas demand, procurement of additional ancillary services, energy efficiency investments, capital costs of new capacity, and other costs associated with the retirement or decreased operation of coal-fired capacity in the ERCOT region. Consideration of these factors would result in even higher energy costs for consumers.

## Senate EPW Letter

### Signed by 41 Senators

Sens. Vitter, McConnell, James Inhofe (R-Okla.), John Barrasso (R-Wyo.), Jeff Sessions (R-Ala.), Mike Crapo (R-Idaho), Roger Wicker (R-Miss.), John Boozman (R-Ark.), Deb Fischer (R-Neb.), John Cornyn (R-Texas), Roy Blunt (R-Mo.), John Thune (R-S.D.), Orrin Hatch (R-Utah), Pat Toomey (R-Pa.), Ron Johnson (R-Wis.), Mike Enzi (R-Wyo.), Mark Kirk (R-III.), Tom Coburn (R-Okla.), Mike Johanns (R-Neb.), Chuck Grassley (R-Iowa), James Risch (R-Idaho), Marco Rubio (R-Fla.), Johnny Isakson (R-Ga.), John Hoeven (R-N.D.), Richard Shelby (R-Ala.), Lindsey Graham (R-S.C.), Lamar Alexander (R-Tenn.), Mike Lee (R-Utah), Pat Roberts (R-Kan.), Dean Heller (R-Nev.), Rand Paul (R-Ky.), Jerry Moran (R-Kan.), Tim Scott (R-S.C.), Ted Cruz (R-Texas), Dan Coats (R-Ind.), Lisa Murkowski (R-Alaska), Thad Cochran (R-Miss.), Jeff Flake (R-Ariz.), Richard Burr (R-N.C.), Saxby Chambliss (R-Ga.), and Rob Portman (R-Ohio).

We write to express our concerns with your proposed rule for existing power plants emissions of greenhouse gases.

Our primary concern is that the rule as proposed will result in significant electricity rate increases and additional energy costs for consumers. These costs will, as always, fall most heavily on the elderly, the poor, and those on fixed incomes. In addition, these costs will damage families, businesses, and local institutions such as hospitals and schools. The U.S. Chamber of Commerce recently unveiled a study indicating that a plan of this type would increase America's electricity bills, decrease a family's disposable income, and result in job losses.

This proposed rule continues your Administration's effort to ensure that American families and businesses will pay more for electricity, an important goal emphasized during your initial campaign for President, and suffer reduced reliability as well. Removing coal as a power source from the generation portfolio – which is a direct and intended consequence of your Administration's rule – unnecessarily reduces reliability and market flexibility while increasing costs. As you are aware, low-income households spend a greater share of their paychecks on electricity and will bear the brunt of rate increases.

In your haste to drive coal and eventually natural gas from the generation portfolio, your Administration has disregarded whether EPA even has the legal authority under the Clean Air Act to move forward with this proposal, the dubious benefit of prematurely forcing the closure of even more base load power generation from America's electric generating fleet, and the obvious signal this past winter's cold snap sent regarding our continued need for reliable, affordable coal-fired generation.

In fact, your existing source proposal goes beyond the plain reading of the Clean Air Act, and it, like your Climate Action Plan, includes failed elements from the cap-and-trade program rejected by the United States Senate. You need only look back to June 2008 for a repudiation of that type of approach by the United States Senate. On June 2, 2008, the Senate debate began on S. 3036, the Climate Security Act, a cap-and-trade bill, and ended

in defeat on June 6, when the Senate refused to invoke cloture. Since that time, Majority Leader Harry Reid has avoided votes that would provide a record of the Senate's ongoing and consistent disapproval of your unilateral action.

Including emissions sources beyond the power plant fence as opposed to just those emissions sources inside the power plant fence creates a cap-and-trade program. As you noted in the wake of the initial failure of cap-and-trade, "There are many ways to skin a cat," and your Administration seems determined to accomplish administratively what they failed to achieve through the legislative process.

At a time when manufacturers are moving production from overseas to the U.S. and investing billions of dollars in the process, we are very concerned that an Administration with a poor management record decided to embark on a plan that will result in energy rationing, pitting power plants against refineries, chemical plants, and paper mills, for the ability to operate when coming up against EPA's emissions requirements. A management decision that eliminates access to abundant, affordable power puts U.S. manufacturing at a competitive disadvantage.

Moreover, there is substantial reason and historical experience to justify our belief that at the end of the rulemaking process, EPA will use its authority to constrain State preferences with respect to program design, potentially going so far as dictating policies that restrict when American families can do the laundry or run the air conditioning. Such impositions practically guarantee that costs, which will of course be passed along to ratepayers, will be maximized, the size and scope of the federal government will expand, and the role of the States in our system of cooperative federalism will continue to diminish.

Finally, we are concerned that there is almost no assessment of costs that will be imposed by this program. Again, if history is any guide, the costs imposed on U.S. businesses and families will be significant and far exceed EPA's own estimate. More disturbingly, the benefits that may result from this unilateral action – as measured by reductions in global average temperature or reduced sea level rise, or increase in sea ice, or any other measurement related to climate change that you choose – will be essentially zero. We know this because in 2009, your former EPA Administrator testified that "U.S. action alone would not impact world CO2 levels." If these assumptions are incorrect, please don't hesitate to provide us with the data that proves otherwise.

## FERC

### Commissioner Phillip Moeller

In July, I testified before the United States Congress on EPA's proposed rule. In my testimony (attached), I express concerns about the reliability implications of the four compliance building blocks and my concern that state implementation plans will be extremely inefficient in a system of interstate regional electric markets. Other concerns relate to the front loaded timeline that as proposed will require the bulk of system changes by 2020. Another fundamental problem is that the CPP seems to assume that a significant amount of new natural gas pipelines needed to fuel power plants, along with a similarly significant expansion of the nation's electric transmission system will suddenly appear so as to meet the new demands under the CPP. Such an assumption ignores the very real challenges we currently have in expanding these categories of energy infrastructure.

Since July, my concerns have only increased based on comments from a wide range of stakeholders. Especially persuasive are comments from the regional grid operators including RTOs and ISOs, and from individual states that foresee immense challenges in complying with the proposed rule.

I am concerned that the costs of the CPP could total hundreds of billions of dollars. But my primary concern relates to implications of the CPP on the reliability of the nation's electricity system. I continue to call for a more formal and transparent process involving FERC (and not just its staff) to examine these reliability implications. The laws of physics will trump any paper regulations or laws. There is a need to involve electric engineering expertise for an open dialogue and debate over what changes to the grid and energy network are feasible and cost-effective in a reasonable time frame.

## 15 Governors

**Alabama, Alaska, Arizona, Idaho, Indiana, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Utah, Wisconsin, Wyoming**

- EPA Authority

The unambiguous language of the CAA expressly prohibits EPA from using Section 111(d) to regulate power plants because EPA already regulates these sources under another section of the Act. Moreover, even if the Agency did have legal authority to regulate power plants under 111(d), it overstepped this hypothetical authority when it acted to coerce states to adopt compliance measures that do not reduce emissions at the entities EPA has set out to regulate. Under federal law, EPA has the authority to regulate emissions from specific sources, but that authority does not extend outside the physical boundaries of such sources (i.e., "outside the fence").' In attempting to regulate outside the fence, the Agency's proposal not only exceeds the scope of federal law, but also, in some cases, directly conflicts with established state law.

## Red AGs

### Oklahoma, West Virginia, Nebraska, Alabama, Florida, Georgia, Indiana, Kansas, Louisiana, Michigan, Montana, North Dakota, Ohio, South Carolina, South Dakota, Utah and Wyoming

- EPA Authority

EPA's proposal violates both the letter and the spirit of the Clean Air Act. It violates the "literal" terms of the Clean Air Act, as EPA has itself conceded. Mem. at 26. It has not been promulgated after the adoption of lawful new source rules under Section 111(b). It departs from statutory authority and regulatory tradition to set energy policy for the states. It departs from the appropriate system of "cooperative federalism" by relegating states to an administrative role in place of their proper substantive one. It treats states as nothing more than giant sources of carbon dioxide emissions. It requires states not only to regulate inside-the-fenceline improvements, but also to make sweeping changes to substantially all aspects of their power sectors. It does all this in the face of an explicit statutory prohibition.

This proposal threatens the states' core interests, the proper functioning of their resource and energy policies, and the very federal structure of our government. The commenting states have an obligation to their citizens to vigorously resist this unlawful proposal. EPA should immediately withdraw the proposal, and if it does not do so, EPA should at the very least ensure that any final Section 111(d) regulations are otherwise stayed until all judicial challenges to those regulations are concluded.

**Blue AGs**

**New York, California, Connecticut, Maine, Maryland, New Mexico, Oregon, Rhode Island, Vermont, Washington, Massachusetts, and the District of Columbia**

Unequivocally supportive of the rule.

## 12 Red States

**North Dakota, Indiana, Pennsylvania, Alabama, Oklahoma, South Dakota, Wyoming, Ohio, Louisiana, Wisconsin, Texas, and North Carolina**

- EPA Authority

EPA does not possess lawful authority to regulate the electric grid in the states. That authority rests with FERC as to wholesale transactions and the states' Public Service Commissions as to retail transactions. Determining the proper balancing of electric resources to meet the needs of electric consumers in the energy producing states consistent with the public interest is a state function held by the energy producing states' Public Service Commissions.

- Reliability

EPA's "building blocks" analysis of the "best system of emission reduction" is not based on accurate or reasonably demonstrated assumptions in the states and is not consistent with the realities of the electric grid.

**14 Blue States**

**California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Oregon, Rhode Island, Vermont, and Washington**

Unequivocally supportive of the rule.

## **RGGI**

### **Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont**

The RGGI states continue to support the EPA's efforts to reduce the greenhouse gas ("GHG") emissions that cause climate change, especially given that the RGGI states are already feeling its effects. We commend the EPA for its continued efforts to improve and clarify the proposed CPP by considering the issues discussed in the NODA, RTM TSD, and Supplemental Notice. With the recommendations included in these comments, the EPA can further strengthen the final CPP rule.

## Western States

### **Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming**

Thirteen Western states are engaged in a dialogue convened by the Center for the New Energy Economy at Colorado State University on EPA's Proposed Rule for Carbon Pollution Emission Guidelines for Existing Electric Utility Generating Units. Across the West there are many divergent opinions on the Proposed Rule. Apart from those divergent opinions, including support and opposition, this document reflects a general agreement among our states on issues that affect the West as a region.

In general, we recommend that the final rule:

- Allow for a range of planning options, including those that support flexible, multistate compliance options without necessarily requiring states to enter into a single regional plan;
- Allow for flexible interim compliance targets that provide room for a range of effective emissions reduction strategies; and
- Coordinate action on tribal sources with compliance planning in the Western region.

## Energy Producing States Coalition (EPSC)

### Alaska, Arizona, Arkansas, Colorado, Florida, Idaho, Indiana, Mississippi, Nevada, North Dakota, Ohio, Pennsylvania, Oklahoma, Texas, Utah, Wisconsin, and Wyoming

- EPA Authority

No less than a dozen state attorneys general from both sides of the political spectrum have taken legal action against this proposal over statutory conflicts within the Clean Air Act that explicitly prevent the agency from regulating existing fossil fuel plants under different sections (Section 111(d) and Section 112) of the Act. Further, the emission reduction targets and the political timeline for compliance envisioned for states appear to be made out of whole cloth with no reference in the statute. Nowhere in Section 111(d) will you find authority for EPA to arbitrarily pick and choose carbon dioxide emission reduction targets nor will you find language offering guidance on a methodology for the agency to do so.

- Cost

If enacted, this impractical, overly broad and legally specious proposal would have potentially disastrous consequences for our nation's electric grid and could prove ruinous for working families through higher utility bills while providing no impact on global carbon emissions or temperatures. Based on EPA's own optimistic estimates, it would only reduce global average temperature by 2/100th of a degree yet add tremendous economic burdens to the country.

- Reliability

Of particular concern to our membership are the permanent and systemic changes it will mean for jobs in our energy producing sectors, and for our constituents that rely on low-cost affordable electricity to power the world's largest economy. The effects of arbitrarily removing an additional 45,000 megawatts of coal-fired electricity projected under this rule – which is the cumulative generation capacity of all the states in New England – will almost certainly mean reliability problems for the Midwest, Southeast, and Western states. Even the nation's independent grid manager, the North American Electric Reliability Corporation (NERC), has warned about the reliability problems associated with this proposal. In fact, it specifically pointed out that the timelines envisioned for compliance under the rule would strain the nation's bulk power system and that more time should be given to states for implementing their plans as well as creating so-called "safety valves" that would keep key fossil units online to avoid grid problems. It is telling that EPA purposefully avoided public meetings in many of the states and regions where the economic impacts of its proposed rule would be most acute. The sad truth is that the harmful impacts of this misguided rule would disproportionately impact the least among us; those on fixed incomes and the working poor we often hear mentioned in public prostrations by the Administration.

**Midcontinent States Environmental and Energy Regulators (MSEER)**

**Arkansas, Illinois, Indiana, Iowa, Kentucky (observer only), Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, South Dakota, and Wisconsin**

The Midcontinent States Environmental and Energy Regulators (MSEER) group brings together state officials from 14 midcontinent states<sup>1</sup> to explore and assess implementation options to meet federal CO<sub>2</sub> emissions requirements for existing power plants. MSEER is interested in understanding whether multi-state coordination would reduce costs and bring other benefits to their states compared to a single-state approach. We write to seek clarification from EPA on how EPA proposes to calculate mass-based goals.

## Alabama

### Senators Richard Shelby and Jeff Sessions

- EPA Authority

It cannot be seriously argued that the action proposed by the EPA has been expressly authorized by Congress. Indeed, if brought to Congress for a vote now, the EPA's proposal would certainly not be approved.

- Cost

The EPA's proposal, if finalized, would impose enormous costs and burdens on Alabama workers and their families, and would hinder our global economic competitiveness. The impact will be felt the deepest in states—like ours—where fossil fuels provide a significant share of our electricity generation. The Administration's claims that energy costs will not be impacted by this proposal ring hollow. Simple economics suggest that the EPA's plan will undoubtedly increase electricity prices, which will hinder—not help—economic growth. Alabama has historically seen lower than average energy costs, in part because our state has been blessed with an abundance of natural resources that can be harnessed to power our homes and businesses and to make life better for our citizens.

### Department of Environmental Management

- EPA Authority

In its June 23, 2014, ruling in the Greenhouse Gas (GHG) permitting case, the Supreme Court of the United States chastised EPA by stating that "An agency has no power to "tailor" legislation to bureaucratic policy goals by rewriting unambiguous statutory terms." The proposed Clean Power Plan is inconsistent with this principle. Clean Air Act Section 111(d) clearly gives EPA the authority to regulate emissions from specific sources, but that authority does not extend outside the physical boundaries of a these sources (i.e. "outside the fence"). In past 111(d) actions, and in similar rulemakings in such areas as New Source Performance Standards and Maximum Achievable Control Technology standards, EPA has never ventured beyond tip-of-stack control or work practices to require reductions, and so EPA's only legal options for requiring reductions from existing fossil-fuel fired power plants lie in these two areas. Since EPA has now rejected tip-of-stack controls (carbon capture and sequestration) for these sources, EPA's only remaining legal option lies in a work practice requirement (building block 1 - efficiency improvements). Emissions reductions from building blocks 2, 3 and 4 are largely based on emissions reductions achievable "outside the fence" and are inconsistent with the CAA and, therefore, proposed building blocks 2, 3 and 4 are illegal.

- Cost / Reliability

EPA developed the proposed rule under the authority of Section 111(d) of the Clean Air Act (CAA), and used four "building blocks" to determine the Best System of Emission

Reduction (BSER). ADEM respectfully submits the following comments on EPA's proposed Clean Power Plan. Although ADEM comments primarily focus on implementation issues, the Department strongly requests that EPA seriously consider issues associated with the overall socioeconomic cost and the potential effects of this proposal on electrical grid reliability.

## Alaska

### **Senator Lisa Murkowski and Rep. Don Young**

- EPA Authority

Lastly, we must state our unease on the matter of jurisdiction concerning GHG emissions. The Clean Air Act was written by Congress to regulate criteria pollutants, not greenhouse gases, and its implementation remains subject to oversight and guidance from elected representatives. We should continue our work to pass meaningful energy and climate legislation, but in the meantime, we will not turn a blind eye to efforts to impose back-door climate regulations with no input from Congress.

- Cost

If adopted as recently proposed, EPA rules will effectively ban these new plants from being built. Further, EPA regulations could prevent existing sources from making upgrades to improve efficiency, which would provide more electricity with less fuel and reduced emissions. Unduly burdensome regulation could destroy years of research in emissions technology, eliminate scientific and engineering jobs, and stymie growth opportunities in America's manufacturing and construction sectors.

### **Governor Sean Parnell**

- EPA Authority

The United States Supreme Court just made the limits on federal agency power clear (Alaska participated in the case against EPA). When statutory authority is ambiguous about whether the EPA can issue expensive new regulations that seize control of large parts of the economy, EPA must go back to Congress.

- Cost

EPA's proposal will result in higher electricity prices and seizes control of energy policy "outside the fence" from Alaskans and local utilities. Incredibly, EPA's costly new rule does very little to reduce worldwide emissions. "Upon full implementation in 2030, the carbon reduced from this massive and costly regime would offset the equivalent of just 13.5 days of emissions from China." *U.S. Chamber of Commerce Institute for 21<sup>st</sup> Century Energy*.

## Arizona

### Department of Environmental Quality

- EPA Authority

Even with whatever limited flexibility the proposal provides for States to depart from these building blocks in developing an implementation plan, EPA’s proposal will force Arizona to undertake a major reengineering of its electric utility system. Section 111(d), a little-used and limited provision, cannot possibly be construed as having such an extended reach. As the Supreme Court recently stated, “[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate a ‘significant portion of the American economy ... we typically greet the announcement with a measure of skepticism.” *Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427, 2444 (2014). As the Court stated, “[w]e expect Congress to speak clearly if it wishes to assign to an agency decisions of vast ‘economic and political significance.’” *Id.* at 19.

### Arizona Corporation Commission

- EPA Authority

The Proposed Carbon Rule treads in areas that are outside of EPA’s statutory authority. Under the Proposed Carbon Rule, EPA’s policies on Greenhouse Gas (“GHG”) would dictate electric dispatch issues and state renewable and energy efficiency policies in the future. This will have dire consequences on the reliability of electric service, national security and resource portfolio planning.

- Cost / Reliability

The ACC has significant concerns with EPA’s Proposed Carbon Rule. The assumptions that EPA has made about the Arizona energy market are inaccurate and lead to goals for Arizona that are unachievable unless all coal plants are shut down by 2020. It is not possible to shut down all coal plants by 2020 without impacting the reliability of electric service, jeopardizing national security by rendering energy infrastructure less resilient to natural or man-made disasters, and undermining resource portfolio planning. Further, according to a recent National Economic Research Associates (“NERA”) analysis, the cost to states to implement the Proposed Carbon Rule is much higher than projected by EPA.

## Arkansas

### **Senator Tom Cotton and Reps. Rick Crawford, Tim Griffin, and Steve Womack**

We are alarmed with the EPA's recent proposed rule (Docket ID No. EPA-HQ-UAR-2013-0602) and the impact the mandated cuts in carbon emissions will have on Arkansas's economy. Your proposed cuts will hit already-stretched consumers with increased electricity costs and will threaten jobs, which remain scarce in the state, through the closure of several coal-fired power plants.

### **Senator John Boozman**

As you know, many Arkansans are concerned that the EPA's proposed crack down on existing power plants will cause energy prices to skyrocket — hurting our families, farmers, and businesses — without providing enough benefits to justify the high costs. Arkansas will be among the states hit hardest by your proposal, and the pain will be felt mostly by low-income and middle-income families. Only a few public hearings on this proposal have been planned, and none are scheduled in Arkansas. Regardless of whether our citizens support or oppose your efforts, their voices should be heard. Therefore, I urge you to expand the schedule to include public hearings on this rule in Arkansas and other hard-hit states.

The EPA's policy will shut down American industries, drive jobs overseas, and create foreign factories that will emit far more carbon dioxide and pollution into the global atmosphere than we would. The policy will shrink our economy by billions of dollars from the projected baseline and destroy hundreds of thousands of jobs. Worse still, the EPA has acknowledged that its actions will do little if anything, on their own, to affect global climate. Even so, the EPA seeks to impose its plan, just to set an example. Developing nations like China can easily ignore these efforts. In fact, the EPA is handing our foreign competitors a significant advantage over American workers.

### **Governor Asa Hutchinson**

- EPA Authority

Finally, under federal law, the Environmental Protection Agency does not have the authority to issue Section 111(d) regulations for emission sources subject to regulation under section 112 National Emissions Standard for Hazardous Air Pollutants of the Clean Air Act. Furthermore, the Environmental Protection Agency does have the authority to regulate emissions from specific sources, but that authority does not extend outside the physical boundaries of that source. By proposing a wide reaching mandate that includes integrating the electrical system and altering consumer behavior, EPA has overstepped its legal authority.

- Cost

One objection is the increased costs Arkansans and Arkansas's manufacturing can expect to face if the proposed plan is implemented. Arkansas's electric power generation comes

from multiple sources, but coal powered plants constitute a major source of Arkansas electrical power. This means that additional mandates, including the 111(d) proposal, that close coal powered plants or increase the costs of generating power from coal will cause an increase in costs for Arkansas residents and manufacturers. Such increases will negatively affect the economic growth and well-being of Arkansans.

- Reliability

A second objection is about reducing the diversity of Arkansas power sources. Arkansas benefits from having diverse and reliable power sources, but the targeted reduction of coal usage will reduce our ability to provide reliable power in times of severe, cold weather. Coal is easily transported while natural gas is more susceptible to interruption because of weather events.

A third objection is the increased competition for limited resources that a reduction in coal usage would entail. Natural gas could be a replacement for cheaper, reliable coal, but without increasing the supply and improving the infrastructure of natural gas and other sources of power, the additional demand for natural gas during winter and other cooler months will increase costs for Arkansans because many Arkansans use natural gas to heat their homes. Increasing the use of natural gas for generating power will necessarily increase prices for Arkansans.

### **Attorney General Dustin McDaniel**

- EPA Authority

Finally, the proposed rule is inconsistent with the long-recognized balance of authority between state and federal regulators under the Federal Power Act, 16 U.S.C. § 791, et al. The CAA provides only for EPA to establish guidelines and does not give it the authority to impose strict mandates on the states. Section 111(d) does not directly authorize EPA to establish standards of performance for existing sources. It merely directs EPA to "prescribe regulations which shall establish a procedure similar to that under CAA §110 under which each state shall submit to EPA a plan which ... establishes standards of performance" for existing sources within the state. CAA § 111 ( d ) ( 1 ) . This proposed rule exceeds the authority given to EPA.

- Cost

As Attorney General, I directly represent the interests of Arkansas's utility ratepayers, as well as the broader concerns of all of the citizens of the state. The proposed rule will have a devastating effect upon the interests of these ratepayers, as well as upon the economy of Arkansas. In addition, the proposed rule so significantly exceeds the authority granted to EPA by Congress that it should be withdrawn in full. Even if EPA had the authority to promulgate a rule of this breathtaking scope, the unrealistic goals imposed upon Arkansas in the proposed rule are arbitrary and unfair and they should be reconsidered.

The rule as proposed will require Arkansas to meet an almost 45% reduction in carbon emissions from electric generating units ("EGUs") by 2030. This is the 6th highest rate of reduction in the nation, imposed upon a state that currently ranks 46th in per capita income. There can be no question that the proposed rule will have a huge impact on our state's utility rates, and these rate increases will disproportionately impact low income Arkansans. In sum, the proposed rule falls hardest on one of the poorest states in America. This drastic reduction creates an economic inequity for Arkansas when compared with other states. While I recognize the importance of reducing our carbon emissions, it is also important to balance necessary change with the economic and social costs imposed upon our citizens.

### **Department of Environmental Quality & PSC**

Under the Proposed Rule, Arkansas would have one of the most stringent goals in the country for reducing the rate of carbon emissions from its electric generating units. As a state small in population, and which is a net exporter of electricity and is home to the nation's only super ultra-critical coal-fired power plant, Arkansas presents unique circumstances which are not adequately accounted for in the goal setting-formula within the Proposed Rule.

The 2030 Arkansas goal, which is the sixth most stringent in the United States, is technically flawed and is unattainable under the contemplated timeframe. The Agencies urge changes in the Proposed Rule to avoid unreasonable and inequitable results that may include disruptions to electric service and significant cost impacts in Arkansas and in neighboring states. Also, the Proposed Rule should be clarified and changed in various ways to better enable compliance, particularly for states like Arkansas that can reasonably be expected to rely on net imports from renewable energy generators for some or all of their renewable electricity generation.

## **Colorado**

### **Rep. Scott Tipton**

Power plants in western Colorado provide families with low-cost energy and support the local economy by providing jobs to thousands of people across the district. Communities, such as Craig, have expressed concerns that these proposed regulations will work to the detriment of their local economies by shutting down local power plants, negatively affect Colorado's mining industry, and needlessly burden Coloradan families and businesses with higher energy costs. It is my hope that by gathering input from stakeholders and individuals in the communities that will bear the brunt of these regulations, we can work together towards implementing policies that balance environmental stewardship and achieving our nation's future energy demands while keeping energy costs low for families and businesses.

### **Department of Public Health and Environment, PUC, and Energy Office**

It is important for EPA to recognize Colorado's past progress as it considers finalization of rules designed to encourage future emissions reductions. Such final rules must be fair, achievable, and based on accurate information and reasonable assumptions. Colorado also urges EPA to consider alternatives, simpler approaches that could complement EPA's existing proposal and achieve the same goals.

## **Connecticut**

### **Department of Energy and Environmental Protection**

Our nation needs a comprehensive framework for addressing climate change, to ensure that all states—not just a proactive few—do their part to make cost-effective reductions in carbon pollution. The Connecticut experience demonstrates the fact that states can dramatically reduce carbon emissions, improve air quality, and protect public health while stimulating economic growth and prosperity. We believe that EPA’s proposed approach to BSER replicates what Connecticut and a handful of other states found to be a successful and universally applicable framework for emissions reductions across the country.

## **Delaware**

### **Senators Tom Carper and Chris Coons and Rep. John Carney**

We applaud the EPA's unprecedented outreach to stakeholders to draft the Clean Power Plan proposal and support the underlying framework of the proposal. We believe the four building blocks approach allows each state the flexibility to find the most cost effective ways to reduce their own emissions. We also were pleased to see that regional greenhouse gas efforts – such as RGGI – could be used to meet state carbon goals.

### **Department of Natural Resources & Environmental Control**

Delaware fully supports EPA's efforts to utilize its authority under section 111(d) of the Clean Air Act to reduce carbon emissions from the power section.

## Florida

### **Reps. Gus Bilirakis, Daniel Webster, Steve Southerland, Dennis Ross, Tom Rooney, Richard Nugent, Ander Crenshaw, Ron Desantis, and Ted Yoho**

- Cost

The proposed rule's implementation timeline may be impossible for many states and utilities to comply with, hurt the reliability of the nation's electrical grid, and considerably raise electricity prices for ratepayers. At a time when America still faces significant economic challenges, the consequences of this rule will make American businesses less competitive, and hurt individuals that are economically disadvantaged and living on fixed incomes.

- Reliability

Compliance with the CPP may result in closing more than 90% of Florida's coal capacity plants by 2030. If coal plants are forced to close prematurely, there will be a vast void in energy-generating capacity that will ultimately require new natural gas plants and related infrastructure before the coal plants close. The CPP's current implementation timeline does not allow for the planning and construction of new plants and related transmission facilities that will replace the coal generated facilities that will be forced into premature retirement. The target reduction and time frame for implementation are implausible without harming Florida's electric grid reliability and raising costs for consumers.

### **Department of Agriculture and Consumer Services**

My greatest concerns regarding the EPA's proposed updates relate to 1) the EPA's overreach far beyond its jurisdiction in proposing this rule and 2) the failure to fully estimate the economic hardship that will result should these requirements be implemented.

### **Office of the Public Counsel**

The Proposed GHG Rule has the potential for significant rate and reliability impacts on Florida's ratepayers. OPC submits the capital expenditures totaling almost \$27 billion to reach the reductions proposed Blocks 1, 3, and 4 are unreasonable.

### **Orlando Utilities Commission**

- EPA Authority

While EPA has insisted there is flexibility beyond the 4 Building Blocks, we believe the authority granted under the CAA and an understanding that OUC's authority and the Florida Department of Environmental Protection statutory authority leave us to achieve compliance with the rule only within the fence line of our generation facilities. Reviewing the policy models of EPA, along with our statutory requirements, OUC believes that implementation of the Proposed Rule will require premature closure of our

fossil fuel-fired plants, will result in stranded costs of a very young fleet and will directly impact our ratepayers and will put OUC in conflict with the Clean Water Act (CWA) and the proposed Waters of the United States Rule (WOTUS).

## Georgia

### PSC

The purpose of the this letter is not to rehash the common arguments made against the above referenced rules. I know you have already heard that the draft rules go beyond the authority of the Clean Air Act and how the rules will jeopardize reliability and drive-up costs by essentially dictating to states which generation resources will be deployed and at what time. While those issues remain and I welcome the opportunity to discuss them in more detail with you, as a colleague who knows and respects you, I am writing now to appeal to your sense of fairness by sharing some insight into how the draft rules might impact my state and illustrate some examples where the rules, as currently written, place undue hardship on Georgia consumers.

## Hawaii

### **Department of Health, PUC, Department of Business, Development, and Tourism, and the Division of the Consumer Advocacy**

While minor modifications related to affected facilities and the details of state plan development may be necessary, we believe that the proposed CPP is aligned with our agenda and provides flexibility for the most cost-effective, technically-viable and meaningful reductions.

## **Idaho**

### **Governor Butch Otter**

In summary, Idaho believes that the EPA lacks the legal jurisdiction to regulate carbon emissions in the overly broad fashion it is proposing. Moreover, because of Idaho's low carbon emissions, Idaho should not be required to meet an emissions performance goal.

...

Idaho should not be subject to a CO<sub>2</sub> emission performance goal because Idaho's generation mix reflects BSER and its carbon profile is already very low. In fact, Idaho's 2012 CO<sub>2</sub> emission level was next to the lowest emission level in the country, second only to the emission level of Vermont, the one State that the EPA does not require to meet a goal. Idaho's carbon profile is low because Idaho has no in-state coal generation. Further, Idaho's two NGCC plants (including one that just started operating in mid-2012) already comply with the NSPS that the EPA has proposed under CAA Section 111 (b). 2 These sources thus already employ BSER under Section 111(d), and the EPA has no legal basis to require Idaho to act further to reduce emissions from these sources under the CAA.

## **Illinois**

### **Governor Pat Quinn**

The Clean Air Act has greatly improved the air quality in the United States, and your Administration's efforts to further reduce carbon emissions will continue our nation's mission of improving our environment.

## **Indiana**

### **Rep. Luke Messer**

According to a new study released by the 60 Plus Association, future higher energy costs caused in part by current and pending EPA regulations "are likely to outstrip real household incomes among the 63% of America's 65+ households with gross annual incomes less than \$50,000." The new Clean Power Plan alone is projected to increase electricity costs by more than \$289 billion according to the U.S. Chamber of Commerce.

### **Governor Mike Pence**

I write to express my great dismay and strong opposition to the proposed rules designed to reduce carbon dioxide emissions from existing power plants. I urge you to withdraw the proposed rules without delay.

The proposed rules are ill-conceived and poorly constructed. They exceed the legal authority granted to the U.S. Environmental Protection Agency (EPA) under the Clean Air Act. They seek to fundamentally restructure how our electricity grid functions while making our electricity less reliable. They will contribute to higher electricity prices at a time when our economy can least afford it. They will drive investment to other countries instead of creating jobs here at home. In short, the proposed rules will hurt Indiana and the rest of the country.

### **Department of Environmental Management, Office of Energy Development, Office of Utility Consumer Counselor, Utility Regulatory Commission, and the Department of Natural Resources**

Indiana is in the process of developing a comprehensive energy plan. This plan is aimed at achieving the dual goals of long-term sustainability and cost-efficiency, while promoting economic vitality. The proposed rules are not consistent with our goals of affordable and reliable energy. Indiana is concerned that the proposed rules will lead to Hoosiers, particularly those in low income socioeconomic brackets, losing heat and power because they will not be able to pay for the rising utility costs. Indiana is also concerned that U.S. businesses will be unable to compete in a global economy due to the higher electricity rates, and that worldwide greenhouse gas emissions may actually increase due to the relocation of manufacturing operations from the U.S. to other countries with less restrictive regulations.

## **Iowa**

### **Department of Natural Resources, Utilities Board, and Economic Development Authority**

Iowa requests that the interim goal be eliminated, or at the very least, start no earlier than the year 2025 with significantly less stringency compared to the final goal. As proposed, there is very little difference between the interim goal and the final goal.

### **Department of Justice – AG Tom Miller**

Overall, Iowa DOJ is pleased with EPA 's incorporation of stakeholder feedback and particularly appreciates EPA taking a flexible approach toward CO2 regulation through the proposed CPP and allowing states significant latitude to develop plans that are appropriate for their unique circumstances.

Iowa DOJ supports the framework for CO2 reduction reflected in the CPP and urges EPA to retain this approach in its final proposal. With the following comments, Iowa DOJ will elaborate on Iowa-specific considerations and highlight matters of particular importance regarding the proposed CPP in areas where EPA has requested comments. Iowa DOJ's comments generally follow the order in the CPP table of contents.

## **Kansas**

### **Department of Health & Environment**

KDHE remains deeply concerned with various aspects of EPA's proposed Clean Power Plan. There is enormous potential for stranded investments under this plan, and the "flexibility" that EPA allows in the state plan development process is not sufficient for addressing remaining useful life considerations. As we stated above, this is a fundamental issue that EPA must address at the front end of the Ill (d) process by incorporating adjustments for plants with recently installed or to be installed controls of stranded investments into the state goal calculations or in the compliance periods.

Time is also of great concern. The complexities of first-time environmental regulations that delve into the domain of energy generation, transmission, and distribution and that expand beyond the fence line of the affected existing source demand an appropriate amount of time for effective state plan development and implementation. KDHE recommends that EPA extend the submittal deadline for the CAA section Ill (d) plan to three years following final rulemaking in parallel with the requirements for SIPs submitted under CAA section 110. KDHE recommends that the multi-state plan timeline be extended to four years after final rulemaking. In addition to requesting an extended time frame for state plan submittal, KDHE recommends that EPA alleviate the compliance "crunch" time by eliminating the aggressive interim goals. According to EPA's projections, Kansas would need to achieve over half of the required emissions reductions by 2020, a mere two to three years after approval of a state plan, and almost 90 percent of the required reductions by 2025. The compliance focus should remain on the final goal. EPA should allow each state to determine its own interim reductions and glide path towards achieving the final goal and maintaining that goal thereafter.

### **Kansas Corporation Commission**

In its proposed Clean Power Plan, the EPA has inserted itself into a regulatory field occupied by the states for decades in which the states have proven expertise in public utility rulemaking and in understanding the complexity of the electric grid and electric reliability. The proposed rule will disrupt the carefully balanced, cost-effective delivery of electricity in Kansas and will lead to detrimental economic effects, both within the Kansas economy and within the states with which Kansas does business.

## Kentucky

### Attorney General Jack Conway

- EPA Authority

In a recent jointly filed lawsuit with eleven (11) other States' Attorneys General, I made my position clear that EPA does not have the authority to promulgate regulations under CAA § 111(d) to limit carbon emissions from existing stationary sources, because EPA has previously regulated these facilities under CAA § 112. Even assuming arguendo that EPA has authority to impact energy policy decisions under Section 111(d), some state Attorneys General and legal commentators opine that the proposed rule's attempt to federalize control over state energy policy is inconsistent with the Federal Power Act. It is unreasonable for EPA to propose regulation under Section 111(d) that would allow precisely the type of federal control over state decision-making that Congress denied to the federal government in the context of the Federal Power Act.

- Cost

EPA fails to supply a safety net to mitigate economic impacts to Kentucky and minimize stranded assets. As Governor Beshear and I have advised in past communications, coal job losses and rising electricity prices pose a threat to Kentucky consumers and our essential industrial manufacturing economy. It is nothing short of irresponsible for EPA to suggest that a \$2 billion loss to our state gross domestic product ("GDP") coupled with a ten (10) percent increase in electricity costs is anything close to "modest".

- Reliability

EPA proposal carries grave risks to electric reliability. The North American Electric Reliability Corporation (hereinafter "NERC") has cited grave reliability concerns with the EPA 111(d) proposal, which would result in between 108 and 134 GW of generation retirements by 2020, most of which will disproportionately impact base-load coal generation in the U.S.

### Energy and Environment Cabinet

- Cost

Independently, the Cabinet determined through its own econometric modeling that the sixpercent change in electricity prices alone estimated by EPA would cause a net loss in the UnitedStates of 439,000 full time jobs, over half (236,000) of which would come from energyintensive manufacturing sectors. 9 As a result of EPA's underestimation of employment effects,the costs of this proposal are likewise underestimated and therefore the RIA's findings are biasedtowards environmental regulation. Furthermore, the Cabinet strongly disagrees with EPA'sassessment "... that impacts on retail electricity prices are modest and fall within the range ofprice variability seen historically in response to changes in factors such as weather and fuelsupply."10

EPA's social cost analysis as presented in the RIA is incomplete. The analysis is deficient in addressing the secondary price effects corresponding to the increased opportunity costs of goods produced in manufacturing-intensive states, like Kentucky. Cabinet modeling suggests that a tenpercent increase in the real price of electricity, which could be intensified by the proposed rule, would, on average, be associated with a 1.1 percent reduction in state GDP (SGDP).<sup>11</sup> This would result in a loss of almost \$2 billion to the state of Kentucky, which represents a loss of over half of its automotive-related foreign exports, or loss of eight percent of its total foreign exports. EPA's analysis should reflect what portion of GDP loss is due to the proposed rule's effect on market conditions.

- Reliability

EPA fails to consider the location of existing units necessary for grid stability in the proposed rule. As units are retired, the operation of the remaining existing units will be necessary to provide voltage support. The units will emit without actually generating megawatts for sale while serving as voltage regulators. EPA should account for the generation of the volt-ampere reactive power when determining the state-specific goals by subtracting this generation from the goal computation.

The Cabinet is also concerned that the proposed rule will affect the ability to transmit electricity from the generating units to the load areas, especially during the timeframe between when the proposed rule is final and when the transmission system can be updated to comply with the final rule. EPA should account for the emissions from the generating units required to operate because of the transmission constraints by implementing a "safety valve" mechanism. Such mechanism could simply deduct the associated emissions generated during must-run conditions from the units' annual emission levels before calculating emission limits for compliance purposes.

## **Louisiana**

### **Department of Environmental Quality**

Administrator McCarthy has stated that EPA’s proposal is “an investment opportunity” and “not about pollution control.”<sup>2</sup> However, the Clean Air Act in general, and Section 111 of the Act in particular, is, on the contrary, solely about “pollution control.” Quite simply, there is no provision in the Act – or in any other statute – that gives EPA the authority to fundamentally change the way electricity is dispatched in a state, to require investment in uneconomic (for Louisiana) renewable energy sources, or to mandate programs reducing the demand for electricity.

For the reasons identified herein, the proposed rule unequivocally exceeds the authority provided to EPA by Section 111 of the Act, violates Section 307 of the Act, jeopardizes the reliability of the electrical grid, unfairly imposes vastly different requirements on states, overestimates purported health benefits, attempts to supplant the sovereign authority of Louisiana by establishing a de facto renewable portfolio standard, and contains numerous other deficiencies.<sup>3</sup> Consequently, it must be immediately withdrawn.

### **PSC**

Of particular concern to members of this Commission is that while the CPP purports to reduce nationwide emissions between 2005 and 2030 by 30%, Louisiana has been saddled with a nearly 40% reduction from 2012 to 2030. This unexplained discrepancy has caused much concern among industry and regulators in Louisiana. Given that only a small portion of Louisiana’s fuel mix is made up of coal and multiple steps have been taken by industry and regulators in Louisiana over the past few years to add renewable and energy efficient resources, the onerous requirement is quite perplexing. The state is seemingly being penalized for diversifying its generation portfolio with cleaner, more efficient generation.

## **Maine**

### **PUC**

\*Generally supportive of the rule.

The Commission comments cover six subjects: (1a) a formulation error that results in inconsistent treatment of existing hydroelectricity in the proposed building block three approach that should be corrected; (1b) the alternative approach for establishing a renewable energy standard in the CPP goal setting methodology lacks the specificity to identify intrastate transmission costs to integrate wind into the New England grid, resulting in overestimation of the economic potential for new renewable generation capacity for Maine; (1c) both existing and new renewables should receive regionalized treatment in any goal setting methodology; (2) the CPP fails to credit early-actor states for the full amount of reductions achieved in recent years;(3) potential unintended consequences from the disparate treatment of natural gas combined cycle generation that in fact provides electricity transmitted across state boundaries; (4) the need to apply rigorous evaluation, measurement and verification ("EM&V") criteria for efficiency measures included in any state's compliance plan; (5) the shortcomings of the proposal set forth in the NODA to change the treatment of renewable energy and energy efficiency in the goal setting formula; and (6) failure of the November rate-to-mass translation to account for the complexity of regional electricity resource changes.

### **Department of Environmental Protection**

The proposed rule is an important step towards creating a sustainable energy supply for the United States.

## **Maryland**

### **Rep. John Delaney**

...I encourage you to give strong consideration to allowing states the additional compliance option of placing a price on greenhouse gas emissions.

### **Department of the Environment & PSC**

The State of Maryland supports EPA's efforts to reduce the greenhouse gas ("GHG") emissions that cause climate change and commends EPA for its continued efforts to improve and clarify the proposed CPP. In these comments, the State of Maryland addresses a specific aspect of the proposed CPP: the rate-to-mass translation. With the recommendations included in these comments, the EPA can further strengthen the final CPP rule.

## **Massachusetts**

### **Executive Office of Energy and-Environmental-Affairs**

In fact, the Clean Power Plan will be a driver for innovation and a catalyst for U.S. competitiveness in clean energy global markets as we take advantage of American entrepreneurship, technological know-how, and a highly skilled workforce.

## Michigan

### Rep. Gary Peters

I am concerned that the proposed final state goal for Michigan is more stringent than other similarly situated Midwestern states. Michigan's final goal of 1,161 average pounds of CO<sub>2</sub> per net MWh is lower than those of Illinois (1,271), Indiana (1,531), and Ohio (1,338). Requiring a lower rate from Michigan, a state that has already made significant progress in reducing carbon emissions, is inequitable. I also believe the final rule should include a mid-term review process to ensure the target state goals and timeline remains realistic and achievable without sacrificing the reliability, affordability, flexibility, and sustainability of the electricity market. I support including a process similar to what was adopted in the 2011 CAFE agreement, to ensure policy is based on accurate data and not outdated projections and estimates. EPA has made clear that the rule aims to provide flexibility to states and I believe a mid-term review of the goals is important to ensure that the rule works as intended.

### Department of Environmental Quality, PSC, and Economic Development Corporation

- EPA Authority

The state also has no authority over this dispatch process and no mechanism to force or modify dispatch of these plants. Until and unless some recently-announced transactions close, it should be noted that a substantial portion of Michigan's natural gas combined cycle (NGCC) capacity is owned by independent power producers that choose what markets to participate in – markets that are run by differing regional transmission organizations. The USEPA has failed to explain how the state could control the dispatch of these NGCC plants given current Federal Energy Regulatory Commission (FERC) regulations. The USEPA should not assume that all of the NGCC plants are owned and operated by the same entity that owns and operates coal-fired generation, nor should it assume that the run/not run decisions are within the state's decision-making authority, or even within the decision-making ability of a single market regulator or system operator.

- Cost

Compliance with the proposed rule will impose new costs and have an economic impact on electricity prices affecting commercial, industrial, and residential rates. The costs of the capital investment needed for the development of new generation sources and transmission projects will be borne by ratepayers.

- Reliability

Certain unanticipated events could affect electric reliability. For example, a severe weather storm or a shutdown at a nuclear power plant could threaten reliability, requiring more carbon-intensive electric generation to prevent outages. Similarly, if shortages develop in natural gas availability, electric generating use may have to be curtailed in

order to allow gas for residential heating demand. Without a “safety valve” to replace that generation, states could potentially face power reliability constraints.

**Minnesota**

**Department of Commerce and Pollution Control Agency**

We applaud EPA's proposed rule approach, and believe it to be both good, and necessary, for the environment and the economy.

## Mississippi

### PSC

- EPA Authority

The building blocks have not been evaluated as a system and, in some ways, work against each other. A strict interim goal and short compliance periods force states' hands. While EPA may believe it is providing a variety of options for states, EPA is actually dictating generation mix, which, as discussed above, oversteps EPA's authority and could not be mandated by EPA.

- Cost

The Commission is concerned that EPA has not thoroughly analyzed anticipated cost impacts on a case-by-case basis.<sup>107</sup> The Commission does not believe that the expected benefits to Mississippi of the proposed rule are justified by the magnitude of the expected costs that Mississippi ratepayers will bear under the Clean Power Plan.

As discussed above (see Section I.C), Mississippi ratepayers spend more of their money on electricity than ratepayers in nearly any other state. Unsurprising given its climate (high sustained temperature and humidity), electricity intensity (consumption per real GDP) is also high, see Figure 7. The high electricity intensity of Mississippi's economy indicates that the state and its citizens are particularly exposed to the costs that would be imposed by the Clean Power Plan. Not only would the proposed rule impose a disproportionate burden on Mississippi by effectively mandating elimination of low-cost coal generation, but the impacts will also have a magnified effect on the state GDP.

- Reliability

The time frames in the proposed rule are woefully inadequate to implement the sort of infrastructure, resource, and planning projects that would be required by the Clean Power Plan. The Commission is concerned about the cost and reliability impacts of being forced to choose a compliance path based on time constraints, rather than what will actually accomplish the goals of reducing CO<sub>2</sub> from power plants while maintaining system reliability, protecting ratepayers, and promoting smart development.

### Department of Environmental Quality

- EPA Authority

In general, MDEQ does not support EPA's approach in the CPP to regulate carbon emissions from electric generating units (EGU's) using the "Four Building Blocks" to establish a Best System of Emissions Reduction (BSER). The proposed BSER approach attempts to regulate entities and programs that are not existing sources defined under § 111(d) of the Clean Air Act (the Act). This approach extends beyond EPA's authority and through § 111(d) would force state environmental regulatory agencies to do the same. However, if MDEQ's assessment is determined to be inaccurate, we are providing

comment on those items that are most concerning to the development of a SIP based on the CPP proposal.

### **Development Authority**

By drastically increasing the cost of energy, the proposed rule will inhibit economic development and hamper growth at a time when many communities continue to feel the negative effects of a prolonged economic downturn. In terms of economic impact, a recent HIS study for the U.S. Chamber of Commerce predicts that proposed EPA CO2 rules will cause the loss of 224,000 jobs annually, increase electricity costs by \$289 billion, and lower household incomes by over \$500 billion. The Mississippi Energy Institute projects that the minimum incremental capital cost for Mississippi to comply with the proposed rule will be \$14.2 billion, which will primarily consist of constructing generating facilities not likely to be built unless compelled by federal mandate. The rule will almost certainly cause the premature closure of existing coal plants in Mississippi, which will reduce energy diversity, security, and reliability, and will place upward pressure on electricity prices. The burden of these added costs will necessarily fall to Mississippi's industrial, commercial, and residential ratepayers.

## Missouri

### **Senator Roy Blunt**

\*Senator Blunt's letter references both EVA and ACCCE.

Missouri electric service providers have warned that the CPP would increase energy costs for Missourians and reduce our state's economic competitiveness. Each "building block" in EPA's proposal poses serious challenges to Missouri service providers. For example, under this proposal service providers may be required to build new natural gas capacity not otherwise needed to meet customer demand or reliability concerns.

### **PSC**

- **EPA Authority**

In submitting these comments, the MoPSC is not offering an opinion regarding the legality of the EPA's authority to promulgate rules under Section 111(d).

- **Reliability**

The proposed rules will change the dispatch of generating units by replacing economic generating resources with less economic resources potentially causing higher market clearing prices. Replacing economical dispatch with 70 percent NGCC could result in additional costs and could affect the reliability of the national electric grid. SPP suggests a comprehensive and independent analysis of the impacts of the proposed rules on the reliability of the nation's electric grid. 12 The MoPSC supports this recommendation.

### **Attorney General Chris Koster**

Budgets are tight, and Missouri residents, many of whom must already make difficult choices each month about which bills to pay, cannot afford a spike in energy prices. It has been predicted by at least one study that, should EPA move forward with its plan as originally announced, consumers across the country will cumulatively pay \$17 billion more per year for electricity, GDP will decline tens of billions of dollars over the next few decades, and hundreds of thousands of workers could lose their jobs.

### **Department of Natural Resources**

Technical recommendations.

## Montana

### **Governor Steve Bullock**

Finally, I feel strongly that this administration has not done enough to advance clean coal technologies. Increasing demand – both domestic and international – ensures that we'll need both carbon-based and renewable sources of energy in the coming decades. Montana is leading the way in much of the clean energy research being done in this country.

### **PSC**

- **EPA Authority**

The Commission opposes the proposed 111(d) rule in its entirety for its lack of jurisdictional basis. EPA applies a strained interpretation to an already tenuous regulatory model. The proposed regulation leaves the Commission with less discretion to regulate electric utilities, even though public utility commissions are best situated to make several of the decisions contemplated by the proposed rule. This raises basic concerns of federalism.

- **Cost**

EPA's cost-benefit analysis is flawed, both because it fails to incorporate the direct costs required to comply with a carbon-emissions reduction of the size the proposed regulation contemplates and because it overstates the value of avoiding those carbon emissions.

### **Crow Nation co-signed by Attorney General Tim Fox**

In sum, both the Proposed Rule dated June 18, 2014, and the subsequent and separate proposed Clean Power Plan Rule for Indian country dated November 4, 2014, simply do not address the Crow Nation's concerns.

## **Nebraska**

### **Governor Pete Ricketts**

Nebraska is the only state whose power system is entirely publicly owned and managed. Our state's public power boards have a statutory duty to provide our 1.87 million citizens with the lowest possible cost energy (Nebraska Revised Statutes Chapter 70-725). Nebraska's public utilities have spent millions to comply with air quality regulations and upgrade existing facilities. The Nebraska Department of Environmental Quality has stated that the implementation of the Clean Power Plan would put these critical investments at risk.

### **Power Review Board**

EPA's Clean Power Plan is effectively a federally mandated energy policy. It would remove a substantial portion of coal generation from Nebraska's fuel mix, and suggests replacing it with other means, which raise concerns as stated in the following comments.

The NPRB has concerns that the proposed regulations will have a detrimental effect for Nebraska's ratepayers in the area of reliability and the price of electricity. The Board also believes that the timelines set out in the proposed guidelines, the energy efficiency assumptions relied upon in the guidelines, and the 70% capacity factor for combined cycle generation units are not realistic.

### **Department of Environmental Quality**

The NDEQ is concerned that EPA has relied on strategies to establish the Nebraska emission goals which fall outside the scope of EPA's jurisdiction and the Nebraska air regulatory programs. EPA has not demonstrated that they have the authority to establish renewable energy targets and require the implementation of demand-side energy efficiency programs. We are also concerned that the assumptions EPA used as a basis are unrealistic. If finalized as proposed, EPA's proposal has effectively narrowed our ability to develop a compliance plan that can meet the intended objectives.

The NDEQ is also concerned that Nebraska's public power districts may be unduly affected by EPA's proposed Clean Power Plan. As you are aware, Nebraska is the only state who, by statute, meets all of its power needs through a public power system. All power in Nebraska is delivered by entities governed by independently elected boards. This system continues to be extremely effective in meeting the needs of Nebraska citizens by delivering reliable, low-cost electricity. As it stands, the Nebraska public power districts may need to reduce capacity and reliance on existing units in order to comply with this proposal.

## Nevada

### **Department of Conservation and Natural Resources, PUC, and the Governor's Office of Energy**

- EPA Authority

The Clean Power Plan threatens the long-standing authority that states have over energy and resource planning. The Nevada Agencies are concerned about the potential of regulatory overreaching that would cause a comprehensive reorder of the jurisdictional relationship between the federal government and the states over the regulation of public entities and energy development.

- Cost

Given these disparities, any one building block would be a feat; however, the USEPA has combined four Building Blocks, with four “best case scenarios,” which conflates the disparities. This situation is compounded even further by a severe interim goal that effectively requires the premature retirement of two base load EGUs, disables the flexibility that the USEPA intended to build into the goals, and leaves no other known methodologies of reduction that would be sufficient to meet the interim goal.

## **New Hampshire**

### **PUC and Department of Environmental Services**

Nebraska is the only state whose power system is entirely publicly owned and managed. Our state's public power boards have a statutory duty to provide our 1.87 million citizens with the lowest possible cost energy (Nebraska Revised Statutes Chapter 70-725). Nebraska's public utilities have spent millions to comply with air quality regulations and upgrade existing facilities. The Nebraska Department of Environmental Quality has stated that the implementation of the Clean Power Plan would put these critical investments at risk.

## New Jersey

### Department of Environmental Protection

- EPA Authority

The State of New Jersey opposes adoption of the EPA's Proposed Rule on Carbon • Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 117 (June 18, 2014). The Department of Environmental Protection has undertaken an extensive analysis of this proposal, found it fundamentally flawed, and respectfully submits that it cannot be redeemed through mere revisions. These draft rules are incomplete, needlessly complex, and impossible to implement.

As a threshold matter, and as elaborated in the accompanying legal comments, EPA's Proposed Rule goes well beyond EPA's jurisdiction for the regulation of emissions from existing electric generating units and instead seeks oversight and control of essentially every aspect of energy generation, transmission and dispatch, and every aspect of energy usage by businesses and citizens throughout the nation. Simply put, the Proposed Rule is not authorized by the terms of the Clean Air Act.

- Cost

Unfortunately, this Proposed Rule will not advance that shared goal. Instead, it would, if promulgated as written, merely burden the citizens of our state with unjustifiable increases in electricity costs. Consistent with our 2011 Energy Master Plan, New Jersey has already promoted cleaner and more efficient energy. Adding a cumbersome and poorly designed federal regulation is the wrong approach. On behalf of the State of New Jersey, I urge EPA to withdraw this Proposed Rule in its entirety, set a proper foundation that is squarely within EPA's jurisdictional authority, and avoid the inequities and unintended consequences of the current proposal.

## New Mexico

### Public Regulation Commission

With these duties in mind, I am compelled to inform EPA that its recent actions and this proposal would impede the NMPRC from performing its duties and infringe on its authority to fulfill its state constitutional responsibilities. With that said, I am particularly concerned with prematurely shuttering or limiting the production of existing, very reliable, low cost, electric generation units and how ratepayers, shareholders, state and local governments, the State's economy and system reliability will be negatively impacted if EPA's proposed rule is adopted and implemented.

### Environment Department

- EPA Authority

The U.S. Environmental Protection Agency (EPA) should reconsider the unprecedented reach of the Proposed Rule by recognizing the appropriate limits of federal authority under the Clean Air Act (CAA). While EPA has the authority to regulate emissions from specific sources, this authority does not extend outside the physical boundaries of such sources (i.e., “outside the fence”). Likewise, EPA fails to recognize that State agencies charged with enforcing the Proposed Rule have no authority to enforce outside the fence reductions. By proposing to regulate outside the fence, the Proposed Rule exceeds the scope of EPA’s authority under the CAA.

- Cost

EPA should analyze and publish revised cost estimates that account for cost estimates from all components of the “best system of emissions reduction” (BSER). EPA’s technical memo on cost considers only Building Blocks 1 and 2. To be accurate and realistic, EPA should consider costs for all four Building Blocks and include an estimate of the costs associated with stranded assets due to this rulemaking. The 2.7 –4.4% electricity cost increases included in the technical memo as a result of 111(d) implementation are highly uncertain due to the complexity of the plan and length of implementation. Maintaining affordable electricity and minimizing costs to ratepayers should be a priority.

## **North Carolina**

### **Department of Environment and Natural Resources**

NCDENR believes EPA's proposed rules under 111(d) to reduce carbon dioxide emissions from both power plants and beyond power plants is legally and technically flawed. EPA appears to recognize the legal vulnerabilities by proposing to make each of the "building blocks" independently severable – as if realizing they will be vacated by the Court during judicial review.

### **Utilities Commission Public Staff**

The Public Staff has identified numerous errors in EPA's calculation of North Carolina's proposed CO2 emission rate as well as inappropriate assumptions with respect to what is technically and economically achievable in North Carolina. Additionally, the Public Staff is gravely concerned that the impact the Proposed Rule could impair electric rates and service reliability in North Carolina.

## **North Dakota**

### **Governor Jack Dalrymple**

The Proposed Rule is not consistent with the language, context, legislative history, and consistent past EPA administrative interpretation of Clean Air Act (CAA) 111(d). For the first time, EPA now proposes to set state-by-state enforceable mandates. The Proposed Rule would usurp North Dakota's authority to "establish" performance standards by dictating what the standards must be.

EPA's "building blocks" analysis of the "best system of emission reduction" is not based on accurate or reasonably demonstrated circumstances in North Dakota and is not consistent with the realities of the electric grid. Regulating the electric grid rests with the Federal Energy Regulation Commission ("FERC") as to wholesale transactions and the North Dakota Public Service Commission as to retail transactions. Determining the proper balancing of electric resources to meet the needs of electric consumers consistent with the public interest is therefore a state function.

### **PSC**

If finalized, EPA's Proposed Rule would substantially increase rates North Dakota consumers pay for their electricity, and could significantly impact the reliability of the electrical service they receive. As such, the Commission respectfully requests that EPA fundamentally rethink the Proposed Rule.

### **Department of Agriculture**

The North Dakota Department of Agriculture (NDDA) provides over 100 programs to regulate and advocate for agriculture production and producers in the state. North Dakota's farmers and ranchers depend on reliable, affordable energy sources and with the increased energy development in the state, energy and agriculture are fundamentally intertwined. As proposed, the current rule must be substantially reworked and should only proceed with significant revisions that are flexible and take into account specifics regarding each state's energy portfolio.

Currently, North Dakota is one of only seven states that meet EPA's clean air standards. Western North Dakota contains the largest known deposit of lignite coal in the world, with four surface mines operable in the region. These mines provide about four-fifths of North Dakota's electricity generation, but the state's needs are ever increasing. The Bakken oil boom has created a large demand for electricity in North Dakota, South Dakota and Montana. A 2012 study conducted by Kadrmaz, Lee and Jackson for the North Dakota Industrial Commission shows that North Dakota will need an additional 2000 megawatts of generation between 2012 and 2032. The region - including North Dakota - will require an additional 2,500 megawatts. If the proposed rule is not reworked to provide flexibility and allow North Dakota coal plants and other energy sources to meet this need, prices will inevitably go up and reliability will falter.

### **Department of Health**

The Department provides these comments on the Proposed Rule because it is not consistent with the federal Clean Air Act and because the framework set forth in the Proposed Rule would fundamentally intrude upon traditional powers reserved to the State of North Dakota and the Department. Further, even if EPA had the authority to promulgate a final rule based on the building block approach set forth in the Proposed Rule, the technical basis for the calculation of the North Dakota CO<sub>2</sub> emission requirements in that proposal contains numerous serious errors. For all of the reasons set forth above, the Department believes that the Proposed Rule is flawed, and should not be finalized.

## Ohio

### Attorney General Mike DeWine

The U.S. EPA's proposed rule on greenhouse gas emissions from existing power plants breaches limitations enshrined in the Clean Air Act and extends far beyond the Agency's authority in seeking to reconfigure the nation's energy policies and priorities. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34829 (proposed June 18, 2014). The proposed rule is anticipated to cost Ohio residents billions of dollars a year by 2025 while jeopardizing the reliability of our State's electric grid – all without basis in the law.

### Environmental Protection Agency

- EPA Authority

U.S. EPA proposes to revamp the entire power generation, transmission and distribution system by using Section 111(d) of the Clean Air Act (CAA), a rarely-used section that reserves much authority and flexibility to the states. The U.S. Supreme Court has held that vast regulatory expansions can only stem from clear Congressional authorization. Through its proposed Section 111(d) rulemaking, U.S. EPA is seeking to broadly expand its regulatory reach from emission control to power generation, transmission and distribution control without having the clear authority under the CAA.

- Cost / Reliability

Ohio supports diversification of energy sources that responsibly maintain or increase reliability and provides predictable and low costs to consumers. This proposed rule jeopardizes these fundamental benefits to Ohio consumers.

### PUC

The PUCO again asserts that the CPP is not legally enforceable as constructed. However, assuming arguendo that the CPP survives legal scrutiny, the PUCO respectfully requests that US EPA consider these comments when constructing the final CPP rule, and specifically, Ohio's goal emission rates.

The PUCO also implores US EPA to consider the overarching necessity of delivering reliable and affordable electric service to Ohio's consumers. This need is vital to the health and well-being of Ohio's consumers and economy.

## **Oklahoma**

### **Department of Environment Quality**

For numerous reasons, it is the position of the Oklahoma Department of Environmental Quality (“ODEQ”) that EPA’s Proposed Rule is fundamentally flawed and unworkable. As the Supreme Court of the United States recently stated in regard to EPA’s efforts to regulate greenhouse gas (“GHGs”) in the Tailoring Rule, “[w]e are not willing to stand on the dock and wave goodbye as EPA embarks on this multiyear voyage of discovery.” *Utility Air Regulatory Grp. v. E.P.A.*, 134 S. Ct. 2427, 2446, 189 L. Ed. 2d 372 (2014). Although the issues are not identical, there are some serious legal and practical issues regarding the approaches set forth in EPA’s Proposed Rule, and prudence requires that the rule not be finalized or implemented until such issues are resolved. Consequently, ODEQ requests that EPA withdraw the Proposed Rule, and work with the states, the stakeholders, and the general public to develop an approach that is both practical and consistent with the structure and legal authority provided in the Federal Clean Air Act. Additional consideration should be given to providing options using a broader approach to help address concerns of reliability of service and the impact on utility rate payers.

### **Office of the Secretary of Energy & Environment**

As a practical matter, however, the proposed rule introduces unworkable barriers to implementation on the state level and has raised significant concerns regarding system reliability. These factors must be taken into account in the promulgation of a final rule. Otherwise, the proposed rule should be withdrawn and re-proposed in a manner that adequately addresses these and other implementation and reliability concerns.

## **Oregon**

### **Department of Environmental Quality**

Oregon applauds EPA for developing the proposed Clean Power Plan in a manner that identifies the least cost methods for reducing greenhouse gas emissions in the power sector by accounting for non-emitting sources of generation and energy efficiency.

## **Pennsylvania**

### **Senator Bob Casey**

EPA should re-examine its formulation of targeted emission rate reductions under all four building blocks, particularly renewable energy, to ensure Pennsylvania is not disproportionately burdened in the National effort to reduce carbon pollution.

We have the obligation to take back control of our national security, our energy future, and our economy. I believe we must not pick winners and losers in the types of energy we pursue in our efforts to reduce pollution. Renewable energy, energy efficiency, clean coal, nuclear, and natural gas all have an important role to play in shifting to a lower carbon economy. But if our pursuit is properly planned, we can foster economic control and support our nation's communities in strategically shifting forward to a lower carbon economy.

### **Reps. Charlie Dent, Patrick Meehan, Glenn Thompson, Bill Shuster, Jim Gerlach, Lou Barletta, Mike Kelly, Keith Rothfus, Scott Perry, Tim Murphy, Joe Pitts, and Tom Marino**

We are concerned that if the issues raised are left unaddressed, any final clean power plant rule will have a disastrous impact on the Commonwealth. Without any changes, Pennsylvania could see a significant increase in the cost of electricity. Further, the electric grid's reliability could be negatively impacted. Both of these potential outcomes would significantly reduce the Commonwealth's economic prosperity and viability, without any substantial added environmental benefit.

### **Rep. Mike Kelly**

While the stated intent of the proposed rule is to cut carbon emissions from our nation's power plants, I believe its overall purpose is to cut coal out of America's energy inventory.

The consequences of such action would negatively affect millions of American citizens.

## **PUC**

- **EPA Authority**

EPA's Section CAA 111(d) proposal expands EPA's regulatory authority into areas delegated by statute to the regulatory domain of the FERC as the statutory overseer of wholesale energy markets. FERC's mission is to assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.<sup>58</sup> EPA's mission is to protect human health and the environment by issuing and enforcing anti-pollution standards.<sup>59</sup> When establishing a standard of performance for achieving the best system of emission reduction (BSER), EPA must consider the costs of achieving emission reductions as well as the energy requirements. 42 U.S.C. § 7411(a)(1). However, the methods that EPA proposes should

not operate in a way that creates obstacles to the reliable functioning of wholesale capacity and energy markets at just and reasonable rates.

- Cost

The PAPUC cannot emphasize enough the potential negative impact that these proposed regulations pose to the reliability of the PJM transmission system, the function and operation of the PJM wholesale electric market, the cost of electricity to retail customers and the composition of generation in PA and the region.

- Reliability

EPA's proposed CAA Section 111(d) emission standards, if implemented, present potential challenges to the reliability of the electric grid impacting Pennsylvania and the PJM region. EPA's proposed Building Block framework<sup>27</sup> for calculating emissions reductions targets through improved heat rates (BB1) and re-dispatch to natural gas combined cycle (NGCC) units (BB2) will require generators, public utilities, transmission operators and PJM to operate under a significantly different paradigm that emphasizes the dispatch of electricity based on environmental factors as opposed to economic factors that traditionally underlay the wholesale competitive markets. As will be addressed later, the EPA has not given sufficient consideration to the impacts its proposal will have on organized electricity markets and the challenges that the proposal presents to system reliability and the economy.

### **Department of Environmental Protection**

Further and aptness notwithstanding, the CO<sub>2</sub> emission targets that have been proposed for Pennsylvania can only be achieved by establishing a state energy plan that regulates the electric energy market, including both generation and end usage, which are both beyond the authority of EPA.

## **Rhode Island**

### **Senator Sheldon Whitehouse**

Congratulations on the release of the first-ever carbon pollution limits for the biggest emitters – power plants. The Environmental Protection Agency is involved in a significant and consequential regulatory enterprise, as the fifty worst American power plants together emit more carbon pollution than all of South Korea or all of Canada.

### **Department of Environmental Management and the Office of Energy Resources**

We, the Director of RIDEM and the Commissioner of RIOER support the framework of the CPP, including the concept of utilizing four building blocks to establish the state goals. As proposed, the CPP will further strengthen the RGGI program and provides a means for Rhode Island to demonstrate compliance with the CPP.

...

In Rhode Island, all of our electric generating units (EGUs) are natural gas combined cycle units (NGCCs). Under a state rate compliance option, we have no coal generation, Oil/Gas steam or other generation to redispatch to NGCC and we have no opportunity to improve facility heat rates. Therefore, Building Blocks 1 and 2 do not necessarily directly apply to our State.

## **South Carolina**

### **Department of Health and Environmental Control**

\*Surprisingly supportive of the rule. Mostly technical recommendations.

### **Office of Regulatory Staff**

However, the Proposed Rule presents significant concerns about the impact of the Proposed Rule on costs and reliability. Our review thus far indicates that the Proposed Rule as drafted will likely cause substantially increases in the rates and bills for electricity within South Carolina significantly impacting our state's consumers and economy. Additionally, the Proposed Rule could adversely impact the reliability of electric service.

### **Attorney General J. Emory Smith, Jr.**

\*Letter stating his support for the comments filed by the Department of Health and Environmental Control.

## South Dakota

### **Senators Tim Johnson, John Thune, Amy Klobuchar, Al Franken, Heidi Heitkamp, and John Hoeven and Reps. Kristi Noem, Collin Peterson, Kevin Cramer, and Steve Daines**

We are writing to request additional review of the technical feasibility of South Dakota's carbon emissions reduction target under the Environmental Protection Agency's Clean Power Plan. South Dakota's unique generating profile, including just one coal-fired steam electric generating unit (EGU) and a single natural gas combined-cycle plant (NGCC), severely constrains flexibility in meeting the state-level target.

### **Governor Dennis Daugaard**

South Dakota has only one coal-fired power plant and one natural gas combined cycle plant, which each plant serving different Regional Transmission Organization electric grids.

Due to the limited number of fossil fuel power plants in the state, EPA's proposal affects South Dakota disproportionately compared to other states and leaves South Dakota with scant and inadequate options to use to meet the goal set by EPA.

### **PUC**

- **EPA Authority**

States need to have the authority to implement the broad carbon emission goal-setting policies, and EPA must have the same authority in the event it must order a federal implementation plan. EPA clearly does not have such authority based on the legal arguments made by numerous states' Attorneys General. <sup>2</sup> As a result, EPA's outside the fence approach is technically and legally unworkable and should be abandoned.

- **Cost**

As explained in detail within these comments, the proposed rules include specific goals for South Dakota that are not technically feasible or achievable. Moreover, the SD PUC believes implementing the rules as proposed will result in a substantial increase of electric rates in South Dakota.

- **Reliability**

The SD PUC reiterates here an underlying theme within all of these sources, which is the fact that thorough analysis of grid reliability and stability cannot be completed within EPA's proposed timeline. Should EPA not grant the appropriate timeline flexibility required for analyzing electric grid reliability and stability in its final rule, then the SD PUC recommends that, at a minimum, EPA provide some form of reliability safety valve. Any such reliability safety valve must ensure that the electric grid can maintain its reliability as the proposed rules force the transition from base load coal-fired generation to base load natural gas generation.

## Tennessee

### Department of Environment and Conservation

- EPA Authority

As set forth below, among other issues, EPA has expanded key definitions in the CAA; not recognized key language in the CAA and its current regulations regarding state discretion to set the standards of performance recognizing the unique characteristics of sources in a state; and failed to satisfy legal requirements in defining the Best System of Emission Reduction.

- Cost

TDEC is concerned that EPA has taken the fact that some states and/or utilities have invested in certain technologies and/or measures, concluded that they are equally applicable everywhere and apply the entirety of its Best System of Emission Reduction to every state, requiring emissions reductions representative of all the technologies and/or measures (set at best practices levels) from all states in the form of mandatory state goals.

### Regulatory Authority

First, EPA has no authority to regulate coal-fired power plants under Section 111(d) of the Clean Air Act. Second, EPA has exceeded its authority by requiring emissions reductions “outside the fence” of the affected source. Because of these serious legal and policy flaws, I join the chorus of states, elected officials, individuals, and interest groups in calling for the withdrawal of the Proposed Carbon Rule.

...

The Proposed Carbon Rule is contrary to the Tennessee Valley Authority Act of 1933 (TVA Act), specifically the amendments to the TVA Act contained in the Energy Policy Act of 1992. Both the TVA Act and Energy Policy Act were acts of Congress passed by the legislative branch, yet with the Proposed Carbon Rule, the executive branch acting through EPA seeks to obviate the will of Congress by administrative fiat.

## Texas

### PUC

- Rule 111(d) will create significant electric reliability problems in Texas.
- Rule 111(d) unfairly penalizes Texas for its success in the early adoption of renewable energy and energy efficiency programs, its diverse fuel mix, and its highly successful and competitive electricity market (ERCOT).
- EPA's attempt to control the nation's electricity markets through the adoption of Rule

111(d) is an unlawful intrusion into areas it has neither the authority nor the expertise to

regulate.

### Commission on Environmental Quality

The proposed rule will have a severe and disproportionate impact on Texas. Based on EPA's Integrated Planning Model (IPM) projections of state CO<sub>2</sub> emissions from EGUs for the proposed rule, Texas would be required to make approximately 19% of all CO<sub>2</sub> reductions necessary for the United States. Comparing EPA's IPM projections of the 2030 base case CO<sub>2</sub> emissions with the 2030 policy case, Texas is expected to reduce its annual CO<sub>2</sub> emissions by approximately 114 million short tons, which is more than twice that of the state with next highest total mass of CO<sub>2</sub> reduction expected. While Texas does have more CO<sub>2</sub> emissions from electric generation than any other state, Texas' large electric generation is due in part to the state's large population. Texas is the second most populous state in the United States. Texas also has a large and diverse industry that relies on the state's electrical system. According to the United States Census Bureau's 2011 survey data, Texas' manufacturing sector had a total value of shipments of approximately \$671 billion, more than any other state and approximately 12% of the total manufacturing sector for the United States. However, approximately 85% of Texas' electrical load is confined within Electrical Reliability Council of Texas (ERCOT) region. ERCOT is a finite grid with limited interconnections to other transmission regions within Texas. This constraint, coupled with the large residential, industry, and business electrical demand in the state, is another reason why Texas is disproportionately impacted by the proposed rule.

## Utah

### Governor Gary Herbert

- EPA Authority

The scope of this proposed regulation is unprecedented, affecting institutions and regulatory processes that have not previously been subject to the Environmental Protection Agency (EPA) under the Clean Air Act (CAA). Such a dramatic expansion of CAA authority warrants clear direction and clear legal authorization from Congress, which has not yet been granted. Understandably, the state of Utah has deep concerns about the legal basis for this proposal.

- Cost

As you may know, coal is the dominant source of generating electricity in Utah, and has been so for decades. This is an industry, which supports thousands of well-paying jobs throughout the state, particularly in rural areas. Any transition away from this historically low-cost electricity source will have economic repercussions not just for the communities of those employed in the industry but throughout the state in the form of higher electricity prices.

- Reliability

Aside from the legal and administrative concerns, the time frame allowed for this proposed regulation is extremely limited and will further exacerbate economic and logistic impacts of implementation. The proposed changes to the energy portfolio warrant a time frame that allows for adequate planning, development and deployment of new energy options that insulate the system from reliability shocks and provide for an affordable power supply.

## Virginia

### Senator Tim Kaine

Therefore, I propose that EPA include a framework for providing appropriate flexibility to head off potential unforeseen impacts to electricity affordability and reliability. Such a framework may include an evaluation of the agency's current legal authority and discussion of the circumstances under which the agency would consider flexibility and the measures it would take to address a deleterious unforeseen circumstance.

### Rep. H. Morgan Griffith

While I do not agree with your proposal, we can argue the merits of the underlying policy in the halls of Congress. More importantly, I do not believe that EPA has the legal authority to promulgate this proposed regulation.

### Rep. Scott Rigell

This proposed rule will compromise reliability and the safety net that would otherwise be provided by an "all-of-the-above" energy strategy. Such a strategy has been endorsed by many energy experts and elected officials, including the President. Following it would permit utilities to build and operate electric generating plants utilizing renewable resources, more traditional fuels like natural gas and nuclear, as well as state-of-the-art coal units. This strategy would ensure that families are not left in the dark, or worse, left without heat or air conditioning in extreme situations.

It would be a strategy that is risky indeed to the pocketbooks of average Americans—and to electric system reliability—to effectively eliminate the use of coal, which is one of the lowest-cost sources of power, while at the same time implementing regulations that will increase the cost of power from stations that are still operating, and finally effectively mandating the use of high-cost sources of power.

I am concerned that such a strategy will result in a significant increase in our state's utility rates. During a time when job creation and economic development are of paramount importance both to our states and to our nation, these higher electric rates will reduce our worldwide competitiveness in attracting new businesses, and may also force existing businesses to reduce their workforces to cover increased expenses, or, more ominously, to relocate altogether.

### State Corporation Commission

- Cost

To achieve the carbon emission reductions required by the Proposed Regulation, customers in Virginia will likely pay significantly more for their electricity. This is so for several reasons, the most obvious being that the Proposed Regulation will require a substantial portion of today's electricity production to be replaced in part with new and higher cost production and in part with higher cost programs intended to decrease

consumption. Those higher costs will be reflected in the electric bills paid by customers in Virginia.

- Reliability

Based on the substantial acceleration of emission reductions called for in the current draft of the Proposed Regulation, EPA's own model predicts that Virginia will experience significant retirements of power plants. These retirements are of grave concern because the power plants involved are used today to ensure reliable service to Virginia customers, have years of useful life remaining, and cannot be replaced overnight or without regard for impacts on the electric system. To meet the demands of the Proposed Regulation will require the rapid development of significant, costly new infrastructure that will need to be appropriately sized and located to ensure that customers continue to receive the same level of reliable service they currently enjoy, and which federal reliability laws require. It will be a challenge to meet federal reliability requirements during such a transition.

### **Department of Environmental Quality**

As discussed above, Virginia is supportive of a rule that achieves meaningful reductions in CO2 emissions, but we are concerned that the proposal falls short of the requirements of the Clean Air Act in several important respects, and we ask that the final rule be revised accordingly.

### **Attorney General Mark Herring**

\*Generally supportive of the rule.

## Washington

### **Governor Jay Inslee**

Our strong support for the Clean Power Plan and the proposed framework for the rule far outweigh any concerns we have with the details of the proposal. We stand ready to continue to assist in this priority work and urge the expeditious development and adoption of your final rule.

## **West Virginia**

### **Senator Joe Manchin**

Let me first say that there is no doubt that seven billion people have had an impact on our world's climate; however, the proposed EPA rule does little to address the global problem with global solutions. Instead, it appears to be more about desirability rather than reliability or feasibility, with little regard for rising consumer prices, the effects on jobs, and the impact on the reliability of our electric grid. The President's own Energy Information Administration (EIA) predicts that coal will continue to provide nearly a third of our electricity through 2040, but the rule seems to ignore that reality.

### **Department of Environmental Protection**

With its far-reaching proposal, EPA plans to boldly venture into many roles that go well beyond its historic responsibility under the CAA of regulating emissions of air pollutants from sources. With the finesse of a bull in a china shop, EPA intends to assert itself broadly into new regulatory arenas that impact all areas of the nation's economy. Under the proposed rule, the agency will invade the province of the WVPSC and other state utility regulatory agencies, the Federal Energy Regulatory Commission (FERC), North American and regional reliability entities, regional power markets and regional transmission organizations, by directing fuel choices for electric generation and thereby affect dispatch of generation and the operation of the nation's electric grid. EPA will do this not based on the cornerstone criteria of reliability and cost, but instead upon the single-minded criterion of carbon intensity. As a result, electrical grid reliability will fall precipitously and costs will rise. Under the guise of regulating carbon emissions under the CAA, EPA will undertake regulation of sources of power generation which have no carbon emissions. It will similarly extend its reach to regulation of end-use consumers of electric power, claiming CAA jurisdiction over the daily lives of all citizens and the entirety of the American economy with respect to the use of electricity. As a result, the economy and citizens will suffer. According to an analysis performed by the Marshall University Center for Business and Economic Research, West Virginia will lose over 4,000 jobs and hundreds of millions of dollars in wages.

## **Wisconsin**

### **Governor Scott Walker**

Double digit rate increases attributable to this rule will have a detrimental impact on this sector of our economy and as a result, impact family budgets across our state. This rule and other pending rules from the EPA will take Wisconsin backwards.

In Wisconsin, we are also greatly concerned about electric reliability. EPA has not adequately examined the impact of the proposal on this critical issue. As a state that obtains more than fifty percent of its electricity from coal, I am very concerned that a shift away from a coal-fired fleet to natural gas plants, which are designed to supplement coal-generated power to meet peak demands, will jeopardize our ability to meet electricity needs.

### **PSC and the Department of Natural Resources**

It is unfortunate, then, to see that Wisconsin's early, aggressive, and measurable actions to reduce CO2 emissions are largely ignored by EPA's proposed best system of emission reduction (BSEER) approach. In fact, rather than recognizing and rewarding our leadership, EPA's proposal seriously penalizes Wisconsin relative to other states that have taken little to no action on renewables, energy efficiency, and traditional "inside the fence line" controls. This will have real and dramatic consequences on Wisconsin ratepayers, as well as the state economy. Above all else, it is imperative that EPA address and remedy these inequities in any final rule.

## Wyoming

### **Governor Matthew Mead**

The EPA does have the legal authority to propose, finalize or enforce this Proposal. The EPA has introduced a Proposal that will functionally and structurally hamstring the energy and electricity sectors. It will burden our nation's economic security and prosperity with almost no environmental or health benefits.

### **PSC**

We have heard repeated suggestions that by cooperating with other states, costs and burdens could be shared and ameliorated. We reply that other states are not in the altruism business, and we do not expect them to be. In the absence of a fair and reasonable goal, there can and will be no cooperation.

We have heard repeated suggestions that Wyoming will have the flexibility to create solutions for the challenge of the EPA goal. We reply that flexibility will be of little use if the only building blocks presently identified pose an insuperable obstacle. After careful and, in some respects, exhaustive review of the documentation for EPA's goal, we have seen nothing that gives us confidence or even hope that goal can be met.

EPA might wish to consider what incentives this State, or any other, will have to assume responsibility for the Section 111(d) program if the only foreseeable result is catastrophe. We also see the risk that if the State fails in its effort to assume responsibility for the Section 111(d) program, EPA will claim broad enforcement powers under the guise of state law pertinent to the state plan.

### **Department of Environmental Quality**

Wyoming's integral role in energy production provides WDEQ with a well-informed perspective from which to evaluate the Proposed Rule and its potential consequences. WDEQ's review finds that the Proposed Rule is fundamentally flawed and should be withdrawn principally because EPA lacks statutory authority to proceed with this rulemaking. Moreover, the Proposed Rule does not satisfy the statutory requirements of Section 111 (d).