



**STANDARDS OF PERFORMANCE FOR GREENHOUSE GAS EMISSIONS FOR NEW STATIONARY SOURCES:  
ELECTRIC UTILITY GENERATING UNITS; PROPOSED RULE  
ATTENTION: DOCKET ID No. EPA-HQ-OAR-2011-0660**

U.S. Environmental Protection Agency  
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Washington, D.C.

Statement of the National Mining Association  
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Good evening. I am Alex Bond, the Director of Air Quality at the National Mining Association (NMA). NMA represents the producers of most of America's coal, metals, industrial and agricultural minerals. Like the recent rules directed at the electricity sector, this proposal by the U.S. Environmental Protection Agency (EPA) to establish New Source Performance Standards (NSPS) to reduce greenhouse gas (GHG) emissions from new electric utility generating sources is not designed to improve environmental performance, but rather to force retirement of existing power plants and bar the construction of new more efficient coal plants that would provide our nation a robust, diverse, reliable and affordable source of electricity. My comments today will highlight the unlawful, unprecedented and unwise nature of EPA's proposed rule.

**The Proposed Rule is Unlawful**

EPA's NSPS proposal is further evidence that the Clean Air Act (CAA) is ill-suited for addressing climate change. Moreover, it demonstrates how EPA's regulatory approach yields only stunning costs while producing little, if any, measurable benefits.

EPA lacks the authority under CAA § 111(b) to combine disparate source categories – natural gas and coal-fired facilities – into one ‘super category’ of Electric Generating Units (EGUs). The CAA requires EPA to set a standard of performance which reflects the degree of emission limitation achievable through the “best system of emission reduction” (BSER) that has been adequately demonstrated. However, natural gas-fired combined cycle (NGCC) units are not a system of emission reduction; rather, they are a type of power plant. As EPA has long recognized, coal plants and gas plants are wholly different classes and types of power plants. By setting a performance standard that can only be met by a NGCC unit, EPA has unlawfully construed performance standard to mean that a distinct type of facility must be something wholly different than what it actually is – in other words, a coal plant must be a NGCC plant.

EPA has also failed to propose or even discuss a standard for reducing CO<sub>2</sub> emissions from NGCC plants. Is this because EPA recognizes that Carbon Capture and Storage (CCS) is no more commercially available for NGCC units than it is for coal-fired generation when one factors in the cost, legal and regulatory barriers to CCS development and deployment? As it stands, the proposal reflects a decision that BSER for NGCC plants is to do nothing at all - “no controls.” If there is no means for reducing CO<sub>2</sub> from NGCC plants, then the Agency must provide a basis for such conclusion. Equally troubling is the exemption for single cycle gas plants. The end result is to provide an incentive to build and run these less efficient plants more often.

Full consideration of the proposal and the Agency’s reasoning reveal that the proposed rule is simply an attempt to evade the statutory factors for setting NSPS. Because EPA cannot justify determining that CCS is BSER for fossil fuel facilities given the cost, legal and regulatory barriers CCS deployment faces, EPA has instead deployed a backdoor maneuver to require it for coal – but not for natural gas – by

creating an unprecedented source category that results in a standard that coal can only meet through the use of commercially unavailable technology. Proper application of the statutory factors for setting NSPS compels EPA to abandon a proposal that unlawfully combines coal, oil and gas plants into a single source category.

### **EPA's Proposal is Unprecedented**

The Agency's decision to combine two distinct technologies – coal-fired EGUs and NGCC EGUs – which have been previously treated as entirely separate categories into one regulated source category is unprecedented. EPA's decision to treat dissimilar technologies as equals for GHG emissions bucks decades of the established clean air policy. The Agency's reasoning is woefully inadequate and dangerous.

Since the inception of the NSPS program, EPA has placed coal, oil and gas facilities into separate categories. Moreover, the Agency has set separate standards within the coal category for different types of coal. These separate categories exist because, as EPA acknowledges in this rule, the control options for these different electricity generation technologies simply cannot achieve the same emission standards. The same reasoning applies with equal force to this proposal. The only control option EPA focuses upon – CCS for coal-fired units – is commercially unavailable. If CCS becomes commercially viable in the future, there is no reason to believe that it would not be available for NGCC units as well, and then the Agency would be able to conduct a rulemaking to set appropriate NSPS across both source categories. Until such a time, it is reckless for EPA to pursue this rulemaking.

EPA's goal with this proposed rule certainly cannot be to reduce actual GHG emissions. If this were the Agency's purpose, separate – yet realistic and achievable – performance standards for natural gas and

coal-fired units would achieve that goal. Moreover, if GHG reductions were the goal, the Agency would not exempt simple-cycle natural gas units from the rule entirely.

Further, EPA's proposed '30 year average' option coupled with a non-commercially viable CCS process for coal-fired EGUs is also an unprecedented sleight of hand by the Agency, and serves to effectively discourage any future construction of coal-fired units. The planning process for constructing a new coal plant is time intensive, and no utility company will build new plants on the hope that CCS may become viable in ten years. Moreover, EPA fails to explain why its view on CCS viability would not also compel a pathway for phasing it in on new NGCC plants. In this regard, the Agency's reasoning and analyses are incomplete and deficient.

### **The Proposed NSPS is Unwise**

EPA admits that there are no benefits from this proposed rulemaking, based on the assumption that no new coal plants would be built in future years even in the absence of this rule. This argument is self-serving in its own right to justify a rule that imposes a standard that all but guarantees that no new coal plant will be constructed even if energy supplies and costs change. It is stunningly short sighted and unwise to base the future of our energy policy on such a blanket assumption.

The Agency's admission that there are no benefits from this rule is telling, but the real reason is that all credible assessments of potential climate change from CO<sub>2</sub> emissions show that reducing US EGU CO<sub>2</sub> emissions alone would have no discernible impact on climate change. Barring newer, more efficient coal plants in favor of uncontrolled NGCC units further marginalizes this rule in terms its impact on climate change. Either way – under EPA's self-serving reasoning or the more accurate explanation as to why this proposal has no benefits – if this is the case, why go forward at all?

The proposal will only impair the reliability and affordability of domestic energy supplies by severely diminishing the diversity of electricity generation sources we rely upon in the U.S. The proposed rule acts as a de facto mandate from EPA to force utilities to fuel switch from coal-fired generation to natural gas in the future. The Agency's de facto natural gas mandate leaves U.S. consumers and businesses exposed to less reliable, more expensive, and more volatile electric generation sources.

Further, EPA's assumption that there will be an adequate, reliable and affordable supply of natural gas that can sustain the electricity supply does not find any support in energy forecasts. The Department of Energy's (DOE's) Energy Information Administration (EIA) data shows that – after accounting for the decline in conventional gas supplies and imports – the incremental net domestic supply growth from shale gas may be less than half of what is needed to replace the generation from 32 gigawatts (GW) of coal plants that have already been announced for retirement by 2020. Going forward to 2035, a similar deficit will emerge if an additional 36 GW of coal plants are retired, as several forecasts indicate. This has far-reaching implications for thwarting the so-called U.S. “manufacturing renaissance” since there will also be a supply deficit for fueling any potential industrial growth.

In sum, without the construction of more new coal plants, this rule will be “déjà vu all over again” for U.S. manufacturers and households that experienced huge increases in electricity and gas prices from 1998-2008 when even more modest amounts of natural gas than are now forecasted were diverted to the electricity sector. During that period—a period of robust economic growth— the US experienced five natural gas spikes and the concomitant loss of 4 million manufacturing jobs.

## **A Better Way Forward**

The better way, and the only way, forward to reduce GHG emissions from EGUs is to set a practical and achievable standard for coal and natural gas fired units that is in step with a true “All of the Above” energy strategy. Instead of placing de facto bans on new coal construction, EPA rules should enable new advanced coal generation that pays both economic and environmental dividends by replacing old coal units with more efficient lower emission supercritical coal plants. We should acknowledge the economic benefits of a stable and diverse electric generation mix, and realize that policies such as this NSPS fly in the face of that goal.

I close by urging the Agency to withdraw its proposed rule for all of the above stated reasons. NMA will submit more detailed written comments by the June 25, 2012 comment deadline. Thank you for your time today.