



HAL QUINN
President & CEO

April 26, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Attn: Docket ID No. EPA-HQ-OAR-2017-0355

RE: Proposed Rule for Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units – 82 Fed. Reg. 48,035 (Oct. 16, 2017).

Dear Administrator Pruitt:

The National Mining Association (NMA) supports the full repeal of the carbon emission guidelines for existing electric utility generating units, otherwise referred to as the Clean Power Plan (CPP). The Environmental Protection Agency (EPA) clearly possesses authority under the Clean Air Act (CAA) and Administrative Procedure Act (APA) to review, reconsider and repeal its regulations. As we explain more fully in the attached comments, EPA *must* repeal the CPP because it is unlawful, embodies damaging policy and would produce no discernable benefit.

NMA is a national trade association whose members include producers of most of the nation's coal, metal, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; owners and operators of electric generating units; and engineering and other firms serving the mining industry. NMA's members produce and use electricity as well as supply the products that are essential for finding, producing and delivering all forms of energy essential to our nation's well-being.

I. Repeal Is Mandated Because the Clean Air Act Does Not Authorize the CPP

The CPP is an agenda-driven regulation devoid of any congressional authorization. The rule uses a complex, poorly understood and unlawful web of assumptions to dictate emission limits that require a radical reengineering of the electric grid through generation shifting and subsidies from fossil fuel generation to other

generation sources. The former administration stated that the purpose of the CPP is to compel an “aggressive transformation in the domestic energy industry” and create a “new energy economy.” Nothing in the CAA even remotely implies a roving EPA mission to police our economy through its preferred policies.

Supreme Court jurisprudence makes it abundantly clear that assertions of power with vast economic and political significance—like those embodied in the CPP—must be accompanied by a clear congressional authorization. Such an authorization is lacking here, even by EPA’s own admission. In responding to NMA’s application to the Supreme Court for a stay of the CPP, EPA conceded that the CAA does not expressly provide for “generation shifting” as a means to set limits under § 111(d). However, EPA sought sanctuary in what it claims is ambiguity in the statutory text. Even if true, such a claim damns the agency’s costly power plan since the law requires a clear congressional statement of authority to embark upon a policy with such vast consequences for the economy and society.

To suggest, as the agency did, that the absence of statutory text expressly negating the existence of claimed power allows it to presume such power is flatly contrary to the principles of administrative law. Moreover, accepting such an extreme position would allow agencies to enjoy virtually limitless hegemony, the consequences of which would be plainly outside the bounds of the Constitution. See *National Mining Association v. U.S. Dept. of the Interior*, 105 F. 3d 691, 695 (D.C. Cir. 1997).

The only thing clean about the CPP is its break from the longstanding plain meaning and application of the law. The operative provision of the law, CAA §111, authorizes standards applicable to *individual* sources of emissions. The CPP on the other hand engages in verbal gymnastics to effectively transform each state’s electric grid into a single source. The CPP attempts to use §111(d) to bring into its regulatory web those not covered by that section and to coerce sources properly within its scope through standards the agency admits those sources cannot meet.

The CPP also usurped authority that Congress reserved to states and withheld from EPA. Section 111(d) limits EPA to promulgating a “procedure” for states to adopt plans containing State-determined substantive standards of performance. But the CPP is far more than procedural; it seeks to dictate to states the substantive standards of performance they must adopt. And EPA deliberately set those standards at levels that would force states to mandate the retirement of numerous coal-fueled electric generating units, even if states consider the result dangerous or otherwise unwise.

At bottom, the CPP gives each state an emissions budget and an ultimatum: Give us a plan to cut your carbon dioxide emissions using our assumptions about what your power system can achieve, or we will impose a federal plan on your state. Most of the prescribed reductions—more than 80 percent—rely upon actions unrelated to individual sources of the regulated emissions. Instead, they require states to pursue changes in generation sources, future demand, economic dispatch, subsidies and

transmission of electricity within their borders. Remarkably, the CPP requires the states to do more than what EPA could do on its own under a federal implementation plan. EPA lacks both the legal power and technical competence to compel some power plants to close, run less or more, build new generation, add transmission and pipelines and force households and businesses to use less energy.

It is no wonder most of the states and most of the peoples' representatives in Congress opposed the rule. See *S. J. Res. 24* (CRA measure nullifying the CPP; House passed Dec. 1, 2015, Senate passed Jan. 11, 2016). Repeal of the CPP in its entirety would be a welcome return to the rule of law.

II. Repeal Is Required to Avoid Grave Harm to the Country

One of the signature impacts of the CPP is the forced premature retirement of existing coal-fired power plants. The CPP imposes a significant constraint on the future power sector no matter how the grid would otherwise develop as a result of market forces. The rule is a hard cap on CO₂ emissions and therefore a hard cap on coal generation. Market forces become irrelevant. Government policy instead dictates further declines in coal generation. Of course, that was the purpose of the CPP's design—eliminate low cost and reliable electricity and replace it with more expensive and less reliable sources.

The analysis we are furnishing with these comments of EIA's AEO 2018, and additional scenarios EIA did not conduct, demonstrates that the CPP would:

- Force the retirement of an additional 17,000 MW of coal-fired capacity (which is in addition to the 40,000 MW closed due to the EPA MATS rule thrown out by the Supreme Court);
- Reduce coal baseload electricity generation by 19 percent in 2030 (without the CPP coal generation would stay constant);
- Reduce annual coal demand sharply with the cumulative reduction in demand reaching 1.7 billion tons over 20 years;
- Increase retail customers power bills by \$148 billion (constant 2017 dollars) over a 20-year period (these costs do not include costs related to new demand reduction programs or investments in transmission to integrate new variable sources of electricity generation); and
- Inflict significantly more harm to the coal industry and its customers under scenarios of higher economic growth, natural gas prices or nuclear plant retirements.

The fuller consequences of policies designed to drive out more baseload generation are explored in a recent analysis by IHS Markit. *Ensuring Resilient and Efficient Electricity Generation* (Sept. 2017). A less diverse generation portfolio with lower coal and nuclear generation costs more, impairs the reliability and resiliency of the grid and produces little or no reduction in electric sector carbon dioxide emissions because the emissions profile of the

prematurely retiring resources is less than or equal to the profile of the replacement sources.

The current diversified electric supply portfolio as compared to a less diverse one:

- Lowers the cost of electricity by \$114 billion annually and lowers the average retail price by 27 percent;
- Avoids an annual \$98 billion loss in consumer net benefits;
- Reduces the variability of monthly consumer electricity bills by 22 percent through the resilience it provides to the delivered price risk profile of the fuel inputs; and
- Mitigates an additional cost of \$75 billion per hour associated with more frequent power supply outages inherent with a less resilient electric supply portfolio.

The implications of the CPP for the reliability and resilience of the electric grid are enormous. Both the Department of Energy (DOE) and the North American Electric Reliability Corporation (NERC) have recently pointed out that the grid is facing serious challenges owing to the number of ongoing retirements of baseload generating units, particularly coal units.

With the surge in electric demand during the recent “bomb cyclone” weather event, coal was the leading electricity supplier in many of the markets exposed to the event. In the PJM region, coal accounted for 74 percent of the incremental energy needed during the event while other sources (e.g., natural gas, nuclear and wind) provided little or no surge capacity. DOE’s National Energy Technology Lab (NETL) recently concluded that without the coal generation, peak demand in PJM would not have been met and the shortfall could have induced a system collapse. Across all six of the independent system operators, coal was the most resilient form of generation, contributing 63 percent of the net increase in load. Natural gas supplied only 20 percent of the net increase in load while wind generation declined. DOE/NETL, *Reliability, Resilience and the Oncoming Wave of Retiring Baseload Units* (March 13, 2018).

Another regulatory-induced wave of premature coal retirements will only further imperil the reliability and resilience of the power grid. The CPP will compound the damage inflicted by a combination of federal and state policies that suppress market clearing prices which in turn compromise the economics of existing baseload power plants. These policies include the federal Production Tax Credit and Investment Tax Credit, state renewable generation portfolio share mandates and state net metering programs crediting solar PV at retail rather than wholesale prices. These policies effectively shift some costs from the power customer to the taxpayer.

Contrary to the narrative spun by supporters of the CPP, the retirement of many baseload plants is not the product of sub-economic performance. Regulations where the true costs exceed the actual benefits (e.g., MATS) combined with other market

distorting policies mentioned above have produced uneconomic power plant retirement and replacement decisions.

Past regulations imposed emission limits requiring expensive control technologies which raised the cost of coal generation notwithstanding low and stable coal prices. The CPP, on the other hand, is designed to force the closure of coal plants by imposing regulatory constraints on the dispatch of coal generation in order to meet an increasingly stringent emission cap over time.

Without the CPP, coal generation remains steady. Indeed, IHS Markit's analysis concludes that the average going forward cost of most currently operating plants are significantly below the replacement costs for new natural gas or intermittent sources of electricity generation. And this gap between the going forward cost of operating the typical existing plant and its replacement cost will make the existing plants economic for at least a decade more.

III. Repeal Is Required Due to the Lack of Any Real Benefits

The record makes clear that the CPP was a symbolic, but costly gesture. The purported purpose of the regulation is to address what EPA characterized as the threat of climate change. Nowhere in the record did the agency measure whether the rule would do so. Others who used EPA's MAGICC climate model found that the emission reductions may theoretically reduce global temperatures by a mere 0.02°C by 2100.

Even the former EPA Administrator conceded the rule would have little, if any, effect on climate change. In testimony before two congressional committees, Administrator Gina McCarthy purposefully avoided responding to direct questions on the climate impacts. Instead, she rested the justification for the rule on its symbolic value for motivating global action. Her silence on the rule's impact on climate is audible, while her justification based upon speculation about its influence on global policy is impermissible. In sum, the costs of the CPP are real, the benefits are not.

For these and the other reasons set forth in NMA's attached comments, EPA must repeal the CPP.

Sincerely,



Hal Quinn