



THE COMMITTEE ON ENERGY AND COMMERCE

Memorandum

April 10, 2013

TO: Members, Subcommittee on Energy and Power

FROM: Committee Staff

RE: Hearing on H.R. ____, the “Energy Consumers Relief Act of 2013”

On April 12, 2013, at 9:30 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold a legislative hearing on H.R. ____, the “Energy Consumers Relief Act of 2013.” A discussion draft of the legislation was released on April 5, 2013.

I. WITNESSES¹

Mr. Brendan Williams

Vice President, Advocacy
American Fuel & Petrochemical Manufacturers

Mr. Paul Cicio

President
Industrial Energy Consumers of America

Mr. Scott H. Segal

Director, Electric Reliability Coordinating Council

Dr. Anne E. Smith

Senior Vice President
NERA Economic Consulting

Ms. Rena Steinzor

Professor of Law, University of Maryland
President, Center for Progressive Reform

Dr. William N. Rom

Professor of Medicine and Environmental Medicine
NYU School of Medicine
on behalf of the American Thoracic Society

¹ The Environmental Protection Agency and U.S. Department of Energy were invited to testify but declined. Both Federal agencies have advised that they expect to submit written comments on the proposed legislation.

II. BACKGROUND

Since 2009, the Environmental Protection Agency has proposed or finalized thousands of pages of new regulations imposing billions of dollars cumulatively in new compliance costs across the economy. These include rules that may affect the production, supply, distribution or use of energy.²

Certain of EPA's recent or pending rules are projected to cost more than \$1 billion according to the agency's own estimates. For example, EPA's already finalized "Utility MACT" rule is estimated by the agency to impose approximately \$35 billion in new capital costs and \$9.6 billion in annualized costs.³ Similarly, EPA's proposed ozone standards, which were withdrawn in 2011 and are expected to be re-proposed in early 2014, were estimated by the agency to cost \$19 billion to \$90 billion annually.⁴ Currently pending or expected EPA energy-related rules that may impose costs of more than \$1 billion are listed in the Appendix attached hereto.

Certain of EPA's major rules have the potential not only to raise energy costs for consumers but also to impact electric reliability. As of March 2013, 273 coal-fired electric generating units totaling 39,000 megawatts in 32 states have announced they were closing due, at least in part, to EPA policies.⁵ In November 2012, the North American Electric Reliability Corporation (NERC) issued its [2012 Long-Term Reliability Assessment](#) concluding that over 70,000 MW of fossil-fuel fired generating capacity – predominantly coal – will retire over the next 10 years, with 90 percent retiring in the next 5 years, aligning with the compliance deadlines of the Utility MACT rule. This will mean the loss of 20% of the nation's coal-fired generation by 2017.

Access to reliable, affordable energy is critical to American consumers, households and businesses.⁶ While EPA usually projects that the benefits for its rules outweigh the costs, concerns have been raised that certain of EPA's pending energy-related rules have the potential to harm the U.S. economy and employment.⁷

² See, e.g. ["Status of Major EPA Regulations Affecting Coal-Fueled Electricity,"](#) (April 2013, American Coalition for Clean Coal Electricity); ["A Critical Review of the Benefits and Costs of EPA Regulations on the U.S. Economy"](#) (Nov. 2012, prepared by ndp consulting for National Association of Manufacturers); see also Congressional Research Service report entitled *"EPA Regulations: Too Much, Too Little, or On Track"* (Dec. 7, 2012), [Table 2](#) at pp. 33-43 (listing 46 major or controversial EPA regulatory actions since January 2009).

³ See [Final Rule](#) published Feb. 16, 2012; see also [RIA](#); Jan. 24, 2012 [letter](#) to EPA, and May 8, 2012 EPA [response](#).

⁴ See [Proposed Rule](#) published Jan. 19, 2010; see also [RIA](#); [RIA Fact Sheet](#).

⁵ See [List](#) of Coal Plant Shutdowns (March 29, 2013, American Coalition for Clean Coal Electricity).

⁶ The Subcommittee on Energy and Power held a hearing on the important role fuel diversity plays in ensuring affordable, reliable electricity on March 5, 2013. See [Press Release](#); [Hearing Documents and Information](#).

⁷ See, e.g. ["Federal Policies and Regulations: the Future of Affordable and Reliable Electric Power"](#) (March 2013, Alliance for Fuel Options, Reliability and Diversity); ["Estimating Employment Impacts of Regulations: A Review of EPA's Methods for Its Air Rules"](#) (Feb. 2013, NERA Economic Consulting) prepared for U.S. Chamber of Commerce; ["A Critical Review of the Benefits and Costs of EPA Regulations on the U.S. Economy"](#) (Nov. 2012,

III. SUMMARY OF LEGISLATION

H.R. __, the “Energy Consumers Relief Act of 2013” would provide for greater transparency and interagency coordination by prohibiting EPA from finalizing certain energy-related rules if the Secretary of Energy determines the rule would cause significant adverse effects to the economy. Specific provisions include the following:

- **Section 1:** This section provides the short title of “Energy Consumers Relief Act of 2013.”
- **Section 2:** This section prohibits the EPA Administrator from finalizing any energy-related rule estimated to cost more than \$1 billion if the Secretary of Energy determines that the rule will cause significant adverse effects to the economy.
- **Section 3:** This section provides for certain reports and determinations prior to the finalizing of EPA energy-related rules estimated to cost more than \$1 billion.

Section 3(1) of the Act directs that before such a rule may be promulgated as final, the EPA Administrator shall submit a report to Congress that includes: (1) a copy of the rule; (2) a concise general statement relating to the rule; (3) an estimate of the total costs of the rule, including direct and indirect costs; (4) an estimate of the increases in energy prices, including potential increases in gasoline or electricity prices for consumers, that may result from implementation or enforcement of the rule; and (5) a detailed description of the employment effects, including potential job losses and shifts in employment, that may result from implementation or enforcement of the rule.

Section 3(2) provides that before such a rule may be promulgated as final by EPA, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Energy Information Administration, shall prepare an independent analysis to determine whether the rule will cause: (a) any increase in energy prices for consumers, including low-income households, small businesses, and manufacturers; (b) any impact on fuel diversity of the Nation’s electricity generation portfolio or on national, regional, or local electric reliability; or (3) any other adverse effect on energy supply, distribution, or use (including a shortfall in supply and increased use of foreign supplies).

Section 3(3) specifies that if the Secretary of Energy determines that the rule will cause an increase, impact, or effect described in section 3(2), then the Secretary, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Administrator of the Small Business Administration, shall: (a) determine whether such increase, impact, or effect will cause significant adverse effects to the economy, taking into consideration impacts on economic

ndp consulting) prepared for National Association of Manufacturers; [“Economic Implications of Recent and Anticipated EPA Regulations Affecting the Electricity Sector”](#) (Oct. 2012, NERA Economic Consulting) prepared for ACCCE; [“The Economy Derailed, State-by-State Impacts of the EPA Regulatory Train Wreck”](#) (April 2012, American Legislative Exchange Council); [“EPA’s Approaching Regulatory Avalanche ‘A Regulatory Spree Unprecedented in U.S. History’”](#) (Feb. 2012, Texas Public Policy Foundation).

indicators, including those related to gross domestic product, unemployment, wages, consumer prices, and business and manufacturing activity; and (b) publish the results of such determination in the Federal Register.

Section 4: This section contains the following definitions:

1. “Direct costs” and “indirect costs” have the meanings given such terms in chapter 8 of EPA’s “Guidelines for Preparing Economic Analyses” dated December 17, 2010.
2. “Energy-related rule that is estimated to cost more than \$1 billion” means a rule of the EPA that (a) regulates any aspect of the production, supply, distribution, or use of energy or provides for such regulation by States or other governmental entities; and (b) is estimated by the Administrator of EPA or the Director of the Office of Management and Budget to impose direct costs and indirect costs, in the aggregate, of more than \$1 billion.
3. “Rule” has the meaning given to such term in section 551 of title 5, U.S. Code.

IV. ISSUES

The following issues will be examined at the hearing:

- The costs and benefits of EPA’s major pending energy-related rules;
- Potential impacts of such rules on energy prices;
- Potential impacts of such rules on fuel diversity and electric reliability; and
- Potential impacts of such rules on consumers and the overall economy.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Tom Hassenboehler, Patrick Currier or Mary Neumayr at (202) 225-2927.

APPENDIX
Major EPA Energy-Related Rules – Pending

1. **Tier 3 Vehicle and Fuel Standards:** In March 2013, EPA proposed “Tier 3” standards under the Clean Air Act that would establish new vehicle emissions standards and lower the sulfur content of gasoline. EPA estimates annual costs for the overall program of \$2 billion in 2017, increasing to approximately \$3.4 billion in 2030, with estimated annual benefits of \$8 billion and \$23 billion.

Status: The proposed rule was announced March 29, 2013. EPA has not announced a schedule for finalizing the rule.

Links: [Proposed Rule](#); [Draft RIA](#); [Tier 3 Vehicle Emission and Fuel Standards Program](#); [Regulatory Announcement](#); [Regulatory Announcement](#); [EPA Regulatory Tracker](#)

2. **Effluent Limitations Guidelines:** EPA has entered into a settlement to revise existing effluent guidelines under the Clean Water Act for the power sector. The guidelines would apply to steam electric plants that use nuclear or fossil fuels. A cost and benefits estimate is not yet available.

Status: A proposed rule is expected in *April 2013*.

Links: [Amendment to Effluent Guidelines for the Steam Electric Power Generating Category](#); [EPA Regulatory Tracker](#)

3. **Cooling Water Intake Structures Rule (a/k/a “316(b)” Rule):** In April 2011, EPA proposed a rule under Section 316(b) of the Clean Water Act setting standards for cooling water intake structures at power plants to protect aquatic organisms. EPA estimates annualized costs of approximately \$0.3 billion to \$4.6 billion.

Status: A final rule is expected in *June 2013*.

Links: [Proposed Rule](#); [Fact Sheet](#); [Economic and Benefits Analysis](#); [Cooling Water Intake Structures-CWA §316\(b\)](#); [Amended Settlement](#); [EPA Regulatory Tracker](#)

4. **Ozone Standards:** In January 2010, EPA proposed a rule to revise the current National Ambient Air Quality Standards (NAAQS) under the Clean Air Act for ground-level ozone. Costs were estimated by EPA to be \$19 to \$90 billion annually, with benefits of \$13 billion to \$100 billion annually in 2020. EPA withdrew the rule in August 2011 at the President’s direction.

Status: EPA currently projects it will propose a new rule in *January 2014*.

Links: [Proposed Rule](#); [Fact Sheet](#); [RIA](#); [RIA Fact Sheet](#); [Summary of RIA](#) [Summary of EPA Regulatory Actions Relating to Ozone Standards](#); [EPA’s Regulatory Tracker](#)

5. **Coal Ash Rule:** In June 2010, EPA proposed standards to federally regulate coal combustion residuals at power plants under the Resource Conservation and Recovery Act (RCRA) and estimated annualized costs of \$236 million to \$587 million (Subtitle D) to \$1.4 billion annually (Subtitle C), with annualized benefits ranging from approximately \$1 billion to \$7.4 billion.

Status: EPA has not announced a date for finalizing the rule.

Links: [Proposed Rule](#); [Links to Regulatory Information](#); [Frequent Questions](#); [EPA Regulatory Tracker](#)

6. **Remanded Cross-State Air Pollution Rule (a/k/a “CSAPR Rule”):** In August 2011, EPA issued a final “Cross-State Air Pollution Rule” under the Clean Air Act to set emissions limits for power plants in 27 Eastern states and the District of Columbia, and estimated costs of \$1.6 billion already underway due to the Clean Air Interstate Rule (CAIR) and \$800 million in 2014, with annual benefits ranging from \$120 billion to \$280 billion. In August 2011, the Court of Appeals for the District of Columbia issued a [decision](#) vacating and remanding the rule and reinstating CAIR.

Status: On Oct. 5, 2012, EPA filed a [petition for rehearing en banc](#), and on Jan. 24, 2013, the D.C. Circuit denied the petition. On March 29, 2013, the U.S. Solicitor General submitted a [petition](#) to the U.S. Supreme Court seeking review.

Links: [Final Rule](#); [Fact Sheet](#); [RIA](#); [Additional CSAPR Information](#). EPA announced supplements or revisions to the rule on Oct. 6, 2011, Dec. 15, 2011, Feb. 7, 2012, May 11, 2012, and June 5, 2012 (see [Regulatory Actions](#)).

7. **GHG Standards for New Power Plants:** In April 2012, EPA proposed a rule setting greenhouse gas (GHG) “New Source Performance Standards” (NSPS) under the Clean Air Act that would effectively ban construction of all new coal-fired power plants by requiring that the use of carbon capture and storage (CCS) technology that is not commercially available. EPA estimates there will be no compliance costs associated with the rule based on its projection that no new coal plants without CCS would be built in the absence of the rule. EPA also estimates that there will be no climate benefits, but states that by “clarifying that in the future, new coal-fired power plants will be required to install CCS, this rulemaking eliminates uncertainty about the status of coal and may well enhance the prospects for new coal-fired generation and the deployment of CCS, and thereby promote energy diversity.”

Status: EPA has not announced a date for finalizing the rule.

Links: Settlement Agreement and [Fact Sheet](#); [Proposed Rule](#); [Fact Sheet](#); [Modification to Settlement Agreement](#); see also May 17, 2012 [Letter](#) to EPA, and June 28, 2012 [EPA Response](#)

8. **GHG Standards for Existing Power Plants:** EPA has entered into a settlement committing the agency to issue GHG NSPS under the Clean Air Act for existing power plants.

Status: EPA has not announced a rulemaking schedule.

Links: [Settlement Agreement](#) and [Fact Sheet](#) (Dec. 2010); [Modification to Settlement Agreement](#); see also May 17, 2012 [Letter](#) to EPA, and June 28, 2012 [EPA Response](#)

9. **GHG Standards for New and Existing Refineries:** EPA has entered into a settlement committing the agency to set GHG NSPS under the Clean Air Act for new and existing petroleum refineries.

Status: EPA has not announced a rulemaking schedule.

Links: [Settlement Agreement](#) and [Fact Sheet](#) (Dec. 2010)