

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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July 14, 2014

The Honorable Janet McCabe  
Acting Assistant Administrator  
Office of Air and Radiation  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Ms. McCabe:

Thank you for appearing before the Subcommittee on Energy and Power on Thursday, June 19, 2014, to testify at the hearing entitled "EPA's Proposed Carbon Dioxide Regulations for Power Plants."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Monday, July 28, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Ed Whitfield

Chairman

Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power

Attachments

**Attachment 1—Additional Questions for the Record**

**The Honorable Ed Whitfield**

1. The Attorney General of West Virginia wrote to EPA Administrator Gina McCarthy on June 6, 2014 regarding EPA’s view that the agency is not bound by the plain reading of the statutory language of Section 111(d) found in the U.S. Code, under which EPA has no legal authority to regulate CO2 emissions from power plants under Section 111(d). Our understanding is that EPA has taken the position that it does not need to read the provisions of the U.S. Code literally because there was a technical conforming amendment included in the 1990 Clean Air Act amendments that the agency asserts creates “ambiguity” about what is in the law. EPA itself acknowledged in 2005 that that technical conforming amendment was non-substantive and appears to have been a “drafting error.”
  - a. Is EPA aware of any decision, from any court, which has held that a statute that is unambiguous by its “literal” terms can be rendered ambiguous by a non-substantive conforming amendment?
  - b. If yes, please identify any such decision(s).
2. Has EPA estimated the impact of its proposed CO2 rule for existing power plants in terms of global mean temperature? If yes, what is the estimated impact?
3. Has EPA estimated the impact of its proposed CO2 rule for existing power plants in terms of global mean sea level rise? If yes, what is the estimated impact?
4. Last year the Congressional Budget Office did a study of carbon tax policies. It noted that by raising the cost of using fossil fuels, a carbon tax would tend to increase the cost of producing goods and services, would diminish purchasing power of people’s earnings, and would on net reduce the number of people working – it would cause more unemployment.
  - a. Has EPA fully examined the ripple effects caused by the agency’s proposed CO2 rule for existing power plants of higher electricity prices throughout the economy?
  - b. Has that work been subject to independent peer review? Will you supply that work to the Committee?
5. You indicated in your testimony that EPA’s proposed CO2 rule for existing power plants would demonstrate U.S. leadership to the rest of the world with regard to addressing climate change.
  - a. Is it the Administration’s position that this rule as proposed is necessary to demonstrate climate leadership to other nations?
  - b. On what basis does EPA believe that China, India and other countries will adopt similar regulations that will raise electricity rates?
  - c. On what basis does EPA believe that China, India and other countries will not take strategic competitive advantage of the United States if EPA adopts this proposed regulation?
6. In the proposed CO2 rule for existing fossil fuel-fired electric generating units (EGUs), EPA proposes to set mandatory state CO2 targets derived from four “Building Blocks,” the combination of which EPA maintains reflect the “best system of emission reduction” (BSER) for affected EGUs.

- a. With regard to Building Block 2 of the BSER, under what legal authority can EPA require the utilization or dispatch rates of natural gas combined cycle units?
  - b. With regard to Building Block 3 of BSER, under what legal authority can EPA require the utilization or dispatch of renewable energy and “at risk” and under construction nuclear capacity?
  - c. With regard to Building Block 4 of BSER, under what legal authority can EPA require states to implement energy efficiency improvement programs?
7. Under the proposed rule for existing power plants, EPA would require that each State develop a state implementation plan and submit it to EPA for approval.
- a. What if a State chooses not to participate? Would EPA impose a Federal Implementation Plan (FIP)?
  - b. If EPA were to impose a FIP on a State, does EPA maintain that it has the legal authority to implement Building Blocks 2-4 referred to above? If so, please cite and explain the source of that authority, and how it would be implemented for each of the building blocks.
  - c. Why did EPA decide not to issue a draft FIP or model FIP under its proposed CO<sub>2</sub> rule for existing power plants? Please explain the agency’s reasoning for not issuing a draft or model FIP.
  - d. Does EPA plan to issue a model FIP relating to its proposed CO<sub>2</sub> rule for power plants? If yes, when? If not, why not?
8. Why did EPA choose 2012 as the base year for establishing binding CO<sub>2</sub> emissions rates for states? For the final Mercury Air Toxics Standards rule, for example, EPA used heat input data over a three-year period to set base-year emissions. Why, then, did EPA decide to use just one year (2012) in setting binding emissions rates for state plans under the agency’s proposed CO<sub>2</sub> rule for existing power plants?
9. In the proposed CO<sub>2</sub> rule for existing power plants, EPA states that a State Implementation Plan (SIP) “must include enforceable CO<sub>2</sub> emissions limits that apply to affected EGUs. In doing so, a state plan may take a portfolio approach, which could include enforceable CO<sub>2</sub> emission limits that apply to affected EGUs as well as other enforceable measures, such as RE and demand-side EE measures.”
- a. Would all measures included in a SIP become federally enforceable? If yes, how would they be enforceable?
  - b. What is EPA’s legal view as to who will be legally responsible for meeting a state’s binding emissions limit?
  - c. How will citizen suits under Section 307 of the Clean Air Act come into play? For instance, consider a situation in which a state’s demand response program fails to achieve the required results as mandated by an EPA-approved SIP. If a person or particular group files a citizen suit, at whom would that suit be directed? A utility? The state? Specific electricity consumers?
10. If EPA deems a particular component of a SIP deficient in its review of the state’s progress in attaining its 2030 emission limit, does EPA maintain that it can require the state to create and enforce a more stringent renewable portfolio standard? Or to create and enforce a more stringent demand response program? Or to dispatch greater amounts of natural gas? Or to utilize nuclear units at a higher rate?

11. EPA's plan proposes to allow States to hold "other entities to be legally responsible for actions under the plan that will, in aggregate, achieve the emission performance level" (79 Fed. Reg. at 34901)
  - a. Does this mean States will be able to sue third parties, such as industrial, commercial and residential end users, for violations of EPA-approved State Implementation Plans?
  - b. If the State fails to take action against these "other entities" will EPA be able to bring an enforcement proceeding?
12. Under the proposed CO2 rule for existing power plants, EPA assumes that States can cut total electricity use by 1.5% annually.
  - a. What types of energy efficiency measures does EPA anticipate would be required?
  - b. Who would be responsible for the costs associated with undertaking these measures?
  - c. Who would be liable if the efficiency goals aren't met? Commercial, industrial and residential end users?
  - d. How does EPA plan to monitor and enforce consumer behavior?
  - e. What authority does EPA have to require energy consumers to reduce their electricity consumption? What other federal agencies have this authority?
13. State Public Utility Commissions traditionally have authority over energy resource planning, distribution systems, and demand-side management programs within their borders.
  - a. How would EPA's proposed CO2 rule for existing power plants impact State authority over integrated resource planning?
  - b. How would EPA's proposal impact State authority to design, operate, enforce and revise state renewable energy programs?
  - c. How would EPA's proposal impact State authority to develop, operate, enforce and revise demand-side management programs?
14. EPA's proposal suggests that the largest potential for CO2 reduction is in "re-dispatch" from high-emitting generation sources (e.g., coal units) to lower-emitting existing natural gas combined cycle units.
  - a. Does this mean EPA favors a generation dispatch model based on a plant's environmental attributes, rather than the current economic dispatch model which picks generation from least expensive to most expensive?
  - b. What precedent is there for such a dramatic shift?
  - c. Some states belong to Regional Transmission Organizations (RTO), which control the order in which generation is dispatched. How does EPA account for the fact that states in RTOs do not have control over dispatch? Will RTOs be required to review SIPs if a state relies upon dispatch methodology that differs from normal RTO operations? What if two states within the same RTO have conflicting SIP proposals for the dispatch of generation?

15. States within organized electricity markets – which represent about two-thirds of the country – do not have control over the dispatch of electricity. Rather this is controlled by regional grid operators that are subject to oversight by the Federal Energy Regulatory Commission. How does EPA propose to allow States in organized electricity markets to claim credit for dispatch decisions that are outside both their authority and EPA’s authority?
16. In the proposed rule, EPA assumes that natural gas combined cycle (NGCC) plants can operate at 70% capacity.
  - a. Has EPA calculated how much additional natural gas will be required to operate the fleet at 70% capacity?
  - b. How many of the existing plants have the pipeline capacity to receive sufficient supply to operate at 70%?
  - c. What is the pipeline capacity needed to supply the current and anticipated natural gas plants with enough natural gas to maintain 70%?
  - d. What is the anticipated schedule for the construction of the additional pipelines needed?
17. In the proposed CO<sub>2</sub> rule for existing power plants, EPA sets renewable targets on a regional basis. Some states within a region are being asked to reduce CO<sub>2</sub> emissions based on the renewable targets of surrounding states. This may or may not be applicable to some states. Why did EPA choose this approach? Does this put some states in a difficult position, especially given that their ability to comply within their state boundaries may be limited?
18. How does EPA propose to account for CO<sub>2</sub> emissions from biomass renewable resources in calculating the amount of CO<sub>2</sub> reduced if states choose biomass as a compliance option?
19. In the proposed CO<sub>2</sub> rule for existing power plants, EPA projects that under the rule an additional 46 to 50 gigawatts of coal-based electric generation may “be uneconomic to maintain and may be removed from operation by 2030.”
  - a. How did EPA estimate the amount of coal-based electric generation that would shut down by 2030?
  - b. How many coal-based generating units does this represent? And in which states are those coal-based units located?
20. Does EPA’s proposed CO<sub>2</sub> rule for existing power plants preclude states from providing coal-fired EGUs that face special circumstances (i.e., plants that have no fleets to offset emissions, and which have made significant investments in pollution control equipment) with alternative compliance pathways, including more time and flexibility to meet specific requirements under the rule?
21. The polar vortex events in January and February exposed the fragile nature of the electric grid. An estimated 50 gigawatts of coal-fired generation is expected to shut down in the next couple of years due to prior EPA rules, including the MATS rule, and EPA is estimating that the proposed CO<sub>2</sub> rule for existing power plants could result in the retirement of another 46 to 49 GW by 2020. Has EPA requested NERC and FERC to complete a reliability assessment of the proposed rule? If not, why not?

22. Interagency comments on EPA's proposal made public in the Federal Register indicate that EPA's compliance cost estimates did not model the cost of state emissions rate reductions using EPA's proposed building block framework. Is this correct? If so, please explain why, and provide EPA's estimated compliance costs for states and/or regions that were based on EPA's proposed building block framework.
23. EPA estimates that power sector compliance costs associated with its proposed (primary option) rule will be between \$7.3 billion and \$8.8 billion in 2030. Please provide a breakdown of the components of this estimate, including projected incremental costs for electricity transmission, power plant operations and maintenance, pipeline infrastructure, fuel costs, energy efficiency, and other costs.
24. The proposed rule sets a national *mass-based* carbon emissions reduction target of 30 percent below 2005 levels by 2030, but then proposes individual *rate-based* emissions reductions for individual states. Please provide EPA's estimate of the mass-based emissions reductions projected for each state necessary to achieve the national reduction target of 30%. Please also provide EPA's estimate of mass reductions that would be achieved through building block on a state-by-state basis.
25. Has EPA done an analysis of the funding and personnel that would be required to implement and enforce EPA's proposed CO2 rule for existing power plants?
  - a. If yes, how much funding and personnel would be required at the federal and state level to carry out EPA's proposed CO2 regulations for existing power plants? And is EPA's analysis publically available?
  - b. If no, does EPA plan to prepare such an analysis of the funding and personnel that would be required to implement and enforce EPA's proposed CO2 rule for existing power plants?
26. It is our understanding that early in 2015, the Obama Administration plans to announce a U.S. CO2 reduction commitment that it hopes will form the basis of a new international agreement to replace the Kyoto Protocol. EPA's existing power plants rule is expected to be central to this international proposal, but the Administration has not been transparent with Congress or the American public regarding what it intends to pursue.
  - a. Please detail EPA's involvement in Administration discussions leading up to this new international commitment, including when meetings are taking place, what agencies and officials are involved, and what options are under consideration.
  - b. Does EPA intend to bolster the Administration's international efforts by following the power plant rule with new GHG regulations on other sectors, such as refining, manufacturing, agriculture, and chemicals? If so, what is the timetable for those follow-on rules?
27. It is my understanding that EPA is currently considering an application for an Alternative Renewable Biomass Tracking requirement from the Argentinian biodiesel association. The purpose of this application is to establish an alternative compliance mechanism to prove that these foreign companies are in fact using soybeans that qualify under the renewable biomass definition of the program. Ensuring that fuels are produced from renewable biomass is the foundation of the underlying program. Domestic fuel producers are required to meet stringent standards that add to the production costs of the fuel.
  - a. In addition, the approval of such a plan would have significant impact on the biodiesel producers here in the U.S. and the volumes of fuels they are producing in order to fulfill the mandate under the EPA's 2014 volume obligations. It is my understanding that our domestic suppliers are concerned that hundreds of millions of gallons of Argentinian biodiesel could be shipped to this country and qualify for

RINs. What can the EPA tell us about how these decisions are being considered and whether industry will be able to comment on any alternative compliance proposal?

- b. As the agency considers the approval of an alternative tracking requirement for foreign producers which would act as a substitute for the traditional compliance requirements, do you intend to make such tracking requirements should be open to the public comment period so that industry stakeholders can weigh in on the proposal?

## **Attachment 2—Member Requests for the Record**

*During the hearing, Members asked you to provide information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.*

### **The Joe Barton**

1. During the hearing, you testified that you would provide the Committee with the legal support for your testimony that “It is required when we issue a 111(b) standard for a sector to then go forward with a 111(d) standard.” Please provide the Committee with the legal basis for this statement and your position that EPA’s proposal for existing power plants is required under the Clean Air Act.

### **The Robert E. Latta**

1. Assistant Administrator McCabe, during the hearing you testified that a state would not be subject to Clean Air Act penalties if they do not obtain EPA approval prior to adjusting their Renewable Portfolio Standard. Please provide the Committee assurances that states will not be subject to Clean Air Act penalties when revising state laws, including renewable energy standards, without EPA approval.

### **The Honorable Mike Pompeo**

1. Please provide the Committee all information related to meetings between EPA and White House personnel concerning this proposed rule for existing power plants, including: dates, location, attendees, and specific subject matter of those meetings.