

**Opening Statement of Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency**

Legislative Hearing on the Ratepayer Protection Act of 2015

**Energy and Commerce, Energy and Power Subcommittee
United States House of Representatives
April 14, 2015**

Chairman Whitfield, Ranking Member Rush, members of the subcommittee, I appreciate the opportunity to testify before you today on the discussion draft of the “Ratepayer Protection Act of 2015.” Although the Administration does not have an official position on the discussion draft, I would like to make several basic points that I hope will assist the committee in its consideration of a draft bill that EPA views as premature, unnecessary and ultimately harmful.

The science of climate change is clear. The risks of climate change are clear. And the high costs to American families of inaction are clear. That’s why in 2013 President Obama laid out a Climate Action Plan directing agencies to undertake actions to reduce emissions of CO₂ in the US, help prepare communities across the country to adapt to the changes being caused by

climate change, and show leadership abroad in what must be a global effort. A key element of the Plan is the flexible, common-sense program EPA will be finalizing this summer to cut carbon pollution from the power sector – the largest stationary source of CO₂ emissions in the country – while continuing to ensure that all Americans have access to affordable, reliable energy and a clean and healthy environment.

Over EPA's long history developing Clean Air Act pollution standards for the electric power sector, including the proposed Clean Power Plan, the agency has consistently treated electric system reliability as absolutely essential. We have devoted significant attention to this issue ourselves and have also made sure that we were working with stakeholders and energy regulators at the federal, state, and regional levels to ensure that the important public health and environmental protections Congress has called for are achieved without interfering with the country's reliable and affordable supply of electricity. Because of this attention, at no time in the more than 40 years that EPA has been implementing the Clean Air Act has compliance with air pollution standards resulted in reliability problems.

In crafting the Clean Power Plan proposal, EPA sought to provide a range of flexibilities and a timeline for states, tribes, territories, and affected generators that would cut carbon emissions while maintaining affordable electric power and safeguarding system reliability. EPA's proposed plan gives states the opportunity to choose – and allow electric generators to choose – from a wide variety of approaches to cutting emissions, and is intended to provide states, generators, and other entities charged with ensuring electric reliability with the time they need to plan for and address any reliability issues that they believe may arise. This same wide range of approaches also provides states and utilities with the latitude they need to minimize costs.

EPA's proposal maximizes flexibility for the states in a number of ways – all of which are instrumental to safeguarding reliability and protecting ratepayers.

First, the proposal allows states and generators to choose the types of emission reduction measures that make the most sense for them, so that they can devise a carefully tailored plan to meet carbon pollution goals without risk to an affordable and reliable electric power system.

Second, the proposed final compliance date of 2030 gives states, generators, reliability entities, and other stakeholders a 15-year planning horizon – time for planning, coordination, and infrastructure development. Meanwhile, the interim compliance period of 2020 to 2029 was intended to allow states and affected generators to shape their own glide paths so that they can determine the pace and timing of the measures and programs that need to be put in place.

Finally, under the proposal states may act together through regional or multi-state plans, an option that can further reduce costs. We believe that this option allows states to develop strategies that are more in line with existing interstate power markets, taking maximum advantage of the sector's interconnected nature to maintain reliability and affordability while achieving emission reductions.

Thanks to both our extended engagement process and the many substantive comments we received, we know that many states and power companies are urging us to consider changes in order to ensure that the final rule delivers on the significant flexibilities we intend to create to protect system reliability and affordability.

This public process has provided a tremendous amount of information and ideas and I assure you that EPA is taking the information and suggestions commenters have provided very seriously and we expect to make changes to the proposal to address many of the suggestions and concerns we have received.

Ideas offered by stakeholders range from ensuring that initial compliance expectations and compliance flexibilities provide states the latitude they need to establish workable glide paths that do not put reliability at risk, to addressing concerns regarding stranded assets, to facilitating workable regional approaches that are not too formal or complicated to easily implement, to crafting what many are calling a reliability safety valve as a backstop in case a reliability issue does arise.

Turning to the discussion draft, as I noted at the beginning, EPA views the draft as premature, unnecessary and ultimately harmful.

It is premature because the rule has not been finalized yet. As I mentioned, we are looking closely at the input we received, and will be making adjustments to the rule to address many of the concerns that have been raised. It is unnecessary because, as

this testimony – as well as the proposal itself – explain, EPA has the tools as well as the obligation to address issues related both to cost and to reliability and we have made clear our commitment to do just that when we issue the final rule this summer.

And, finally, the bill, if enacted, would do real damage by delaying or preventing the climate and air quality benefits that will be achieved through the timely implementation of this lawful Clean Air Act program. The proposal we issued in June of last year rested on a firm legal foundation. The comments we received during the comment period that ended on December 1, 2014, included extensive discussion of a range of legal issues. The final rule will account for and address those issues fully, and, as a result, the final rule will rest on an even stronger legal foundation. I would not recommend, and I am confident that the Administrator would not sign, a final rule that the EPA did not believe was on firm legal footing and worthy of being upheld by the federal courts. In light of that, the effect of the draft bill would be a wholly unnecessary postponement of reductions of harmful air pollution.

Although members of Congress have routinely expressed concern with EPA's rules and their legality over the years, we are not aware of any instance in the last 25 years when Congress has

enacted legislation to stay implementation of an air rule during judicial review. To do so here, before the rule is even final, would be an unprecedented interference with the EPA's efforts to fulfill its duties under the Clean Air Act—an Act that was written and passed by Congress with bipartisan support and that has brought improved public health to millions of Americans for decades.

And, of course, as the subcommittee well knows, once the final rule is issued and they have a meaningful record to review, the courts will more than likely be given the opportunity by petitioners for judicial review to address arguments and considerations for staying the rule's compliance date even without legislation such as this draft bill.

EPA has taken unprecedented steps to reach out to, and engage with, all of the states and our stakeholders. One of the key inputs EPA heard – before proposal and during the comment period – is the need to design the rule in a way that respects both the urgency of dealing with climate change as well as the time it takes to plan and invest in the electricity sector in ways that ensure both reliability and affordability. We have paid close attention to those comments and will finalize a rule that takes them all into account.

I look forward to your questions. Thank you.