

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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November 2, 2015

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

Dear Acting Assistant Administrator McCabe:

Thank you for appearing before the Subcommittee on Energy and Power on Wednesday, October 7, 2015, to testify at the hearing entitled "EPA's CO2 Regulations for New and Existing 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 November 16, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Will.Batson@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 Rush, Ranking Member, Subcommittee on Energy and Power

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Ed Whitfield

1. Under the 111(d) Rule for existing power plants, States must file a State Plan by September 6, 2016 unless it submits an extension request that is approved by EPA. What specifically must be included in such an extension request in order to be approved by the agency?

The Honorable John Shimkus

1. Do you agree that if EPA is underestimating coal power capacity in the baseline of its 111(d) rule for existing power plants, the agency may be under-reporting the impacts of its rule on coal generation?
 - A. If so, why and if not, why not?
2. In the final 111(d) rule, EPA dramatically increased its estimates for renewable energy development under Building Block 3, and the final renewable energy generation level in 2030 is more than twice the level in the proposed rule.
 - A. Please provide a detailed explanation for the record of the assumptions that EPA used to support its projections in the final rule of such a large scale growth of renewables.
 - B. Please provide a detailed explanation of why EPA projects such a large scale increase while the U.S. Energy Information Administration's estimates for the same time period are significantly lower.

The Honorable Joe Barton

1. Is there anything stopping the EPA from taking a progressively even broader view of its authority under the Clean Air Act if the Supreme Court does not strike down your "outside the fence" approach when the various challenges ultimately make their way to the Court? For example, if this approach is validated, couldn't the EPA seek to reduce emissions from oil and gas refineries by taking steps to artificially deflate the demand for gasoline?
2. Am I correct in reading your RIA that approximately half of the economic benefits you claim come from this rule do not even come from reducing CO₂, but from reducing other pollutants *below* levels required by the NAAQS? In other words, if the NAAQS are supposedly set at levels that are the absolute minimum necessary to protect human health, how can you then turn around and claim a health benefit from reducing them even further? If you are claiming benefits for reductions below NAAQS levels, shouldn't you be lowering the NAAQS proportionately?
3. How does it make sense to set an emission standard that is lower for an existing plant than the one you are setting for new plants?

The Honorable Renee Ellmers

1. By EPA's signing of the final 111(d) rule, are we to assume that disagreement with the Natural Resources Defense Council and Earthjustice who submitted legal briefs to the federal court stating that "the text of §111(d)(1)(A) makes clear that EPA may not set standards for a pollutant that is 'emitted from a source category which is regulated under section 112'?"
2. Do you agree with the Natural Resources Defense Council and Earthjustice who submitted legal briefs to the federal court stating that Chevron deference should not be afforded to the EPA in applying 111(d) because there is no statutory ambiguity? More specifically, on January 12, 2007 these groups submitted legal briefs to the DC Circuit Court of Appeals and stated that the EPA of "manufacture[d]" ambiguity in Section 111(d) in order to claim Chevron deference.
3. Why has your agency consistently opposed attempts to seek judicial review prior to forcing states to develop complex rules in light of Administrator McCarthy's admission that this federalized power plan will not have any significant impact on global warming?
4. Your agency has routinely opposed states from intervening in lawsuits filed by environmental groups against the EPA – in effect blocking the states from having any input into the sue-and-settle strategies employed by special interest groups. Many states have already committed to challenging this rule in federal court when the final rule is published in the federal register. Will your agency oppose the states' legal standing despite the fundamental impact this rule will have on states?
5. Many states will be filing a challenge to this rule and will be asking for stay of this rule. The final rule acknowledges that 1) GHG reductions have already occurred – in fact North Carolina has seen a reduction in GHG emissions of almost 25%, 2) thanks to the natural gas revolution GHG emissions reductions will continue to occur, and 3) this rule will have no significant impact on climate change.....I will assume that you agree with your staff and therefore will not oppose the state's request to stay the rule until judicial review is completed.

The Honorable Adam Kinzinger

1. In its Clean Power Plan, the EPA is imposing mandatory reductions in carbon dioxide emissions for certain states, 42% in Illinois, for example. What happens if a state determines that energy prices for ratepayers are going to significantly increase because of these reductions? Is the emissions goal fixed or are they are circumstances in which a state can adjust its goals?
2. Existing plants will need to be shut down in many states to meet the mandatory carbon dioxide emissions reductions. What happens if a state determines these reductions and shutting down existing plants is going to threaten reliability?
 - A. The EPA has developed a "safety valve" that can apply in emergency situations; does this safety valve relieve a state of its requirement to meet certain carbon dioxide emissions?

3. The final rule includes revisions regarding nuclear power compared to the proposed rule. For example, the new rule clarifies that states can use “power uprates” at existing nuclear power plants as a way to meet these target CO2 emission reductions. There were other changes to the final rule regarding nuclear power as well; however, at a September Subcommittee hearing NRC Chairman Burns told the Subcommittee that EPA had not consulted with the NRC on nuclear components of the Clean Power Plan. To your knowledge, did the EPA consult with the NRC about the nuclear aspects of this plan before the rule was finalized?
 - A. Do you know how many requests for power uprates are pending before the Commission, how long it normally takes to get those approved, or the total megawatts that are technically or economically feasible with our existing nuclear plants?
 - B. Does the EPA plan to consult the NRC going forward on these issues? Especially since applications for new reactors, power uprates, and license renewals all must be reviewed and approved by the NRC?
4. During the formulation of this plan, what kind of research or consideration was put into the number of indirect jobs that will be lost as a result of plant closure and increased electricity prices for small businesses and manufacturers? For example, a recent study in Illinois found that if three existing plants were to close it would result in 2,500 direct jobs, 4,431 indirect jobs, and \$1.8 billion in reduced economic activity.

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional 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 Honorable John Shimkus

1. Please provide a detailed explanation for the record why, for its 111(d) rule, EPA estimated 244 gigawatts of coal generation capacity by 2020 in its June 2014 RIA baseline and an estimated 208 gigawatts of coal generation capacity by 2020 in the August 2015 RIA baseline.
2. Please provide a detailed explanation for the record why, for its 111(d) rule, EPA projects 214 gigawatts of coal capacity in 2016, while the Department of Energy's Energy Information Administration projections are about 261 gigawatts for 2016.
3. Please provide a detailed explanation for the record why in March of 2015 EPA estimated 238 gigawatts of coal generation in its baseline for 2016 and why in August 2015 the agency reported 214 gigawatts in 2016 for baseline coal generation.

The Honorable Mike Pompeo

1. The EPA's response to my June 2014 question for the record asking for specific information relating to meetings between EPA and White House personnel concerning the agency's proposed rule for existing power plants, referred to by the agency as its "Clean Power Plan," was completely unsatisfactory and failed to provide any of the information requested. (See Feb. 11, 2015 EPA Response to Questions for the Record available at <http://docs.house.gov/meetings/IF/IF03/20140619/102346/HHRG-113-IF03-Wstate-McCabeJ-20140619-SD003.pdf>, at p. 14) You promised to take our request back and get specific answers. For each meeting between EPA and White House personnel concerning the "Clean Power Plan," please provide the following information:
 - A. Date;
 - B. Location;
 - C. Attendees;
 - D. Specific subject matter of the meeting;
 - E. Whether there were any associated letters or memoranda prepared in connection with the meeting; and

- F. Whether John Podesta attended the meeting, and if so, his role in connection with the meeting.

The Honorable Bill Flores

1. The Clean Power Plan will be fully implemented by 2030 according to your present plan. What will be the emissions reduction across the nation for Carbon Dioxide in the year 2050 versus today?

The Honorable Billy Long

1. In Missouri, we rely on coal for 83 percent of our energy generation. The Clean Power Plan places a huge burden on coal-fired power plants, and this rule also restricts the construction of new natural gas plants as a compliance measure. Could you explain why the EPA restricts the construction of new natural gas-fired power plants as a compliance measure?