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EPA=S CO2 REGULATIONS FOR NEW AND EXISTING POWER PLANTS: LEGAL PERSPECTIVES

THURSDAY, OCTOBER 22, 2015

House of Representatives,

Subcommittee on Energy and Power,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 2:03 p.m., in Room 2123 Rayburn House Office Building, Hon. Ed Whitfield [chairman of the subcommittee] presiding.

Members present: Representatives Whitfield, Olson, Shimkus, Pitts, Latta, Harper, McKinley, Griffith, Johnson, Long, Flores, Mullin, Hudson, Rush, McNerney, Tonko, Engel, Green, Capps, Doyle, Castor, Welch, Loebsack, and Pallone (ex officio).

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

Staff present: Will Batson, Legislative Clerk; Leighton Brown, Press Assistant; Allison Busbee, Policy Coordinator, Energy and Power; Rebecca Card, Staff Assistant; Tom Hassenboehler, Chief Counsel, Energy and Power; Mary Neumayr, Senior Energy Counsel; Chris Sarley, Policy Coordinator, Environment and Economy; Dan Schneider, Press Secretary; Peter Spencer, Professional Staff Member, Oversight; Christine Brennan, Press Secretary; Jeff Carroll, Staff Director; Caitlin Haberman, Professional Staff Member; Rick Kessler, Senior Advisor and Staff Director, Energy and Environment; John Marshall, Policy Coordinator; Alexander Ratner, Policy Analyst; Timia Crisp, AAAS Fellow; and Josh Lewis, EPA Detailee.

Mr. Whitfield. I would like to call the hearing to order this afternoon. And I know we have a number of our friends on that side of the aisle and a number over here, and I know that Mr. Rush and Mr. Pallone are on their way. And I am sure by the time I finish my statement, we can go right to them for their statement.

So at this time I would like to recognize myself for a 5-minute opening statement.

Two weeks ago, we reviewed the substance of EPA's CO2 regulation for new and existing power plants, all 3,000 pages of them, with EPA Assistant Administrator Janet McCabe. Today's hearing will focus on the legality of this complicated and far-reaching scheme to commandeer each State's electricity system and replace it with a cap-and-trade approach similar to the ones that Congress has repeatedly rejected. And I say that because I think that is what the Federal Implementation Plan is going to be.

There is nothing in the Clean Air Act that even suggests such sweeping agency action is authorized. Indeed, these rules are unprecedented in the 45-year history of this statute. If Congress wanted to authorize a comprehensive transformation of the way America gets its electricity, it would have said so. If

Congress wanted to see a wholesale federal takeover of state authority on electricity policy, it would have said so. And if Congress wanted to largely write fossil fuels out of America's energy future, it would have said so.

In my view, the discrepancy between what EPA is trying to do and what the Clean Air Act actually allows it to do is so wide that I, along with others, would be flabbergasted if the court ruled this action is legal. I might also say there are serious constitutional concerns with what many see as an executive branch power grab at the expense of the legislative branch and the States.

I might add that some of the same reasons EPA's power plant rules are bad law are also the reasons they are bad policy, particularly in the way the Agency treats the States. The 1970 Clean Air Act set out a working partnership between the Federal Government and States stating clearly that air pollution prevention and control are the primary responsibility of state and local governments. In contrast, unilateral EPA micromanagement of electricity generation is a recipe for higher bills, reduced reliability, and job losses that are well out of proportion to any environmental benefit.

The fact that 16 States--and we think there are even going to be more -- believe they have no choice -- they can't sit down

and talk to EPA about this -- they have no choice but to sue the Agency over these rules is a sure sign of an unhealthy federal-state relationship and a policy that won't work. The House passed the Ratepayer Protection Act to address the legal and policy shortcomings of the rule for existing power plants. This bill would extend the state compliance deadlines so that the rule's costly provisions would not take effect until judicial review is complete.

We all recognize that even EPA itself had reversed 20 years of legal opinions about the use of 112 and 111(d). And without accusing anyone of anything, it is very easy to conclude that the reason they reversed this was that it was the only way that they could institute this extreme, radical, unprecedented plan in time for the President to go to Paris next month and proclaim that American is doing more than anyone else.

And that is okay, but if it is illegal, that should be of concern to all of us. And there are many people who believe it is illegal. But we will have the opportunity to get into this because we have a lot of legal scholars here today, and this is one of those issues that many legal scholars are really focused on, as are many Americans, whatever they may be doing in our society.

So I look forward to our discussion today with the legal issues, with EPA's power plant rules, and the concerns that are raised because of this extreme, unprecedented action.

And at this time, I yield back my 11 seconds and recognize the distinguished gentleman from Illinois, Mr. Rush, for a 5-minute opening statement.

Mr. Rush. I want to thank you, Mr. Chairman.

Mr. Chairman, today, we are holding yet another in what has now become an endless series of hearings on the Clean Power Plan. Today, we will once again be focusing on the legal perspectives, which was exactly the same focus of a similar hearing on this very same topic back in March of this year.

Mr. Chairman, this subcommittee has taken valuable time to repeatedly examine the costs of the CPP, the legality of the plan, and ways to repeal or eliminate or hinder or obfuscate the CPP in using legislative means or whatever means that your side might find usable at the time.

However, Mr. Chairman, I must bring to your attention that this very same subcommittee of jurisdiction has yet to hold a single hearing in this Congress on the underlying reason why a plan such as this is even necessary, not a single hearing, Mr. Chairman, to address the very important critical issue of climate

change, global climate change. In fact, Mr. Chairman, it would appear that the majority's side is even hesitant to even utter the phrase climate change unless it is doing so in a mocking, sneering, or contemptuous manner. Mr. Chairman, your side is still bent, still determined to keep their head buried deep beneath the ever-changing sand of ignoring climate change.

Mr. Chairman, in the midst of all these hearings on the CPP, I urge, plead with the majority to also hold at least one hearing -- you can set a time limit, 15 minutes, a half-an-hour, hour, 2 hours, whatever time limit you want to set on the hearing -- just hold a hearing on the issue of climate change.

As a matter of fact, Mr. Chairman, I just wanted to say that the ranking member of the full committee and I will be formally submitting another letter to you and Chairman Upton requesting a hearing in the very near future on climate change.

Mr. Chairman, I want to underline our request by asking you and the members of the other side, let's bring this issue of climate change up for discussion. Let's hold a transparent and substantive debate on the merits of both sides of the argument. Is there something called climate change, or is that just a figment of most of the American people and the scientific community and the experts, is that just a figment of our imagination?

Mr. Chairman, the American people deserve to hear their elected representatives voicing their opinions on what many believe to be the most consequential issue facing our time. If my colleagues on the other side of the aisle truly believe that the overwhelming majority of the world's scientists and climatologists are either wrong, they are misguided, or they are in some ways in cahoots in pulling off a global hoax, then let's discuss this openly in a public hearing.

Even as we sit here today debating whether the EPA has the authority to legally put forth rules to increase the Nation's common emissions, the National Oceanic and Atmospheric Administration released a report just yesterday stating that September was the warmest month globally in the history of this nation, the history of this world that we live in. The NOAA reports that the average global surface temperature in September was 1.62 degrees Fahrenheit warmer than the 20th century average.

Additionally, the agency noted that September was the fifth straight month to bring the high temperature mark this very year, and that January through September saw the warmest temperatures since 1880 -- you and I can remember that -- since 1880 when this data was first reported.

Mr. Chairman, the NOAA reports that the temperatures on land

were 2.09 degrees Fahrenheit higher than the average in September, and that the U.S. experienced its second warmest September on record. We cannot afford to simply ignore science, ignore data, ignore the experts, and ignore the signs that Mother Nature continues to show us.

Mr. Chairman, as we finish today's exercise in futility, this exercise of debating the legality of this rule which the courts will ultimately decide anyway, I would urge the majority to immediately, again, plead with the majority to immediately schedule a hearing on the merits of global climate change.

Mr. Chairman, with that I yield back the balance of my time.

Mr. Whitfield. Now, Mr. Rush, I want you to know I let you go 8 minutes in that opening statement --

Mr. Rush. Well, thank you, Mr. Chairman.

Mr. Whitfield. -- because I wanted you to be sure --

Mr. Rush. I feel very, very passionate about this issue.

Mr. Whitfield. I wanted you to have plenty of time to talk about climate change.

Now, Mr. Upton is not here today. Is there anyone on our side of the aisle that would like to make a comment or discuss the legality or talk about China or --

Okay. Seeing no one, the chair will recognize the gentleman

from New Jersey, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman.

Let me begin by quoting President Obama, who recently said "climate change is no longer some far-off problem. It is happening here. It is happening now. We can't wait for some future generation to take action, and we know that any meaningful action must include drastically reducing our carbon emissions in order to have any chance of preventing the worst impacts of a changing climate."

And that is why EPA has taken action by finalizing a workable plan to reduce emissions of carbon pollution from power plants, which are the largest uncontrolled source of manmade greenhouse gases in the U.S. The Clean Power Plan outlines a path to cleaner air, better health, a safer climate, and a stronger economy. And the rule also gives States flexibility to choose how to achieve their emission-reduction goals, which are state-specific and cost-effective.

And this is a moderate and reasonable approach and falls well within the legal authority and responsibility of the EPA to address carbon pollution from power plants. But I am sure we are going to hear a different story from our Republican friends today. Today's hearing is the seventh on this particular rule and the

second hearing purportedly to examine the legal problems with the Clean Power Plan.

We should not heed the absurd arguments made on behalf of companies that profit from the status quo. Make no mistake, many of the arguments presented today are well-known, that EPA's plan is not legal, that it is unworkable, that some States may refuse to participate. We have heard these claims during previous hearings and debates on the House Floor. We have heard them in the numerous premature attacks on the Clean Power Plan and EPA's carbon standards for new power plants that have already been rejected by multiple federal courts.

And despite the zeal of the rule's opponents, all of these arguments have been soundly refuted and dismissed at every turn. Constantly repeating misguided assertions will not magically make them legitimate or true. Frankly, these frivolous lawsuits are just wasting taxpayer dollars in the name of attacking any action by this Administration to address climate change and carbon pollution.

And all of this is to say that we are on a well-trodden path, and I believe committee time could be put to better use. The truth is Congress overwhelmingly passed the Clean Air Act, a Republican President signed it into law, and now EPA is fulfilling its

executive duty to take care that the laws be faithfully executed. EPA is doing the job we asked them to do, and it is time Members accept that the Clean Power Plan is on solid legal ground and just move on.

As I have said before, Mr. Chairman, those making the arguments heard today aren't really interested in finding solutions to our carbon pollution problem. They aren't interested in developing a plan to help us reduce emissions while still maintaining a safe, reasonably priced electricity system. They are more than welcome to ignore the facts and more than welcome to reject any reasonable plan to address climate change, but history will not treat them kindly. History is on the side of those who want to act on climate change, those who believe in the power of American innovation and our ability to successfully meet any challenge, and who look to the future rather than the past.

We have already wasted too much time listening to the arguments against the Clean Power Plan and on legislation to "just say no" to climate action. Now, Congress must turn the page, and what we cannot do, as President Obama said -- and I will quote him again -- is "condemn our children to a planet beyond their capacity to repair."

I yield back. Thank you, Mr. Chairman.

Mr. Whitfield. The gentleman yields back. And that concludes the opening statements.

And I want to welcome our panel today of five all well-versed legal scholars on these issues. And I am going to introduce each of you individually before you give your opening statement rather than doing it in advance. And so for the first introduction of our first witness, I am going to call on the distinguished gentleman from West Virginia for that purpose, Mr. McKinley.

Mr. McKinley. Thank you. Thank you, Mr. Chairman.

I am pleased to welcome the Solicitor General of West Virginia, Albert Lin. The Solicitor General, Mr. Lin, oversees the Office of the Attorney General's appellate practice, legal opinions, and federal litigation. Formerly a partner at Wiley Rein, he assisted clients with a wide variety of litigation in regulatory matters with a particular expertise in administrative, appellate, and constitutional law.

West Virginia is lucky to have his expertise, and I thank you, Mr. Lin, for coming before our committee today, and we look forward to your testimony.

Thank you, Mr. Chairman.

Mr. Whitfield. So, Mr. Lin, you will be recognized for 5

minutes, and then we will go to the other panelists. Thank you.

STATEMENTS OF ELBERT LIN, SOLICITOR GENERAL OF WEST VIRGINIA; ALLISON D. WOOD, PARTNER, HUNTON & WILLIAMS, LLP; RICHARD L. REVESZ, LAWRENCE KING PROFESSOR OF LAW AND DEAN EMERITUS, NEW YORK UNIVERSITY SCHOOL OF LAW; EMILY HAMMOND, ASSOCIATE DEAN FOR PUBLIC ENGAGEMENT, PROFESSOR OF LAW, GEORGE WASHINGTON UNIVERSITY SCHOOL OF LAW; AND RAYMOND L. GIFFORD, PARTNER, WILKINSON BARKER KNAUER, LLP

STATEMENT OF ELBERT LIN

Mr. Lin. Thank you, Congressman McKinley, Mr. Chairman, members of the committee. I am honored to testify about the legality of EPA's carbon dioxide standards for fossil fuel-fired power plants.

As noted by Congressman McKinley, I am the Solicitor General for the State of West Virginia. My boss, West Virginia Attorney General Patrick Morrisey, has been a leader over the last year in litigation concerning the so-called Clean Power Plan, EPA's effort to regulate carbon dioxide emissions from existing fossil fuel-fired power plants under section 111(d) of the Clean Air Act.

So while there are numerous legal deficiencies with all aspects of EPA's new carbon dioxide standards, I will focus on two of the major legal defects with the section 111(d) rule.

First, EPA has exceeded its authority under section 111(d) by using three wide-ranging building blocks to calculate statewide carbon dioxide emission limits. Block 1 assumes a reduction in carbon dioxide emissions based on greater efficiency from coal-fired power plants. Block 2 then assumes an additional reduction based on substituting coal-fired power generation with natural gas-fired generation. And block 3 reduces the carbon dioxide target further based on substituting coal-fired power with renewable energy like wind and solar.

These building blocks attempt not just to regulate the efficiency of power plants themselves but to favor one form of electric generation over another and to require States to completely reorder their energy portfolios. Indeed, the White House fact sheet released with the final rule described it as an effort to "drive a more aggressive transformation of the domestic energy industry." This is sometimes described as EPA's attempt to regulate beyond the fence line of the individual power plants, and it is not lawful.

By its plain text, section 111(d) concerns only the reduction of emissions through measures that can be applied to improving an individual source's performance. What EPA claims is what the Supreme Court once called "an unheralded power to regulate a

significant portion of the American economy without a clear statement from Congress." The last time that happened in a case called Utility Air Regulatory Group v. EPA, the Supreme Court reversed the Agency.

EPA's obvious goal is to push States and toward a cap-and-trade system. The Agency describes emissions trading as an integral part of its analysis, its proposed federal plan is a cap-and-trade regime, and it puts great weight on the fact that Congress passed a cap-and-trade program for sulfur dioxide in Title IV of the Clean Air Act. But that is precisely the point. The cap-and-trade regime in Title IV is a clear statement from Congress. The one advanced by the rule, in contrast, was specifically rejected by Congress in 2009.

A second problem with the section 111(d) rule is that EPA is already regulating fossil fuel-fired power plants from mercury and other emissions under section 112 of the Clean Air Act. The text of section 111(d) in the U.S. Code says it does not apply to any air pollutant emitted from a source category which is regulated under section 112. This is the so-called 112 exclusion. As EPA itself has long admitted, a literal reading of this text means that EPA cannot use section 111(d) to reach emissions from a source category already regulated under section

112.

To escape this literal reading, EPA argued in the proposed rule that this text doesn't tell the whole story. It argued that in 1990, Congress actually passed two versions of the 112 exclusion, which the EPA means the statute is ambiguous and subject to the Agency's interpretation.

In our litigation and in comments to EPA, we pointed out the significant flaws with this theory, and as a result, in the final rule EPA changed tactics. Now, for the first time in 25 years, EPA claims that the literal text of the 112 exclusion as it appears in the U.S. Code is ambiguous. According to EPA, Congress was unclear when it referred to sources "regulated under section 112." That phrase, EPA contends, can be read to limit the exclusion not only to sources regulated under section 112 but also to pollutants listed under 112. And because carbon dioxide is not listed under section 112, EPA argues, the exclusion does not apply.

But this novel approach, EPA's backup to its previous backup position, does not get EPA out from under the 112 exclusion. Despite its claim, the statute is quite clear. It refers to source categories regulated under section 112, not air pollutants listed under section 112. So what EPA is doing is rewriting the statue, which it is of course not permitted to do.

The section 111(d) rule is thus unlawful in at least two ways: It relies on expressly picking winners and losers in the energy field, and it violates the section 112 exclusion.

Thank you again for this opportunity, and I look forward to your questions.

[The prepared statement of Mr. Lin follows:]

********** INSERT 1 **********

Mr. Whitfield. Thank you very much, Mr. Lin.

And our next witness is Allison Wood, who has testified here before. She is a partner at Hunton & Williams. And, Ms. Wood, thank you for joining us today, and you are recognized for 5 minutes.

STATEMENT OF ALLISON D. WOOD

Ms. Wood. Thank you, Mr. Chairman.

Good afternoon. It is an honor to appear again before this subcommittee to offer testimony on EPA's regulations for power plants under section 111 of the Clean Air Act.

I am a partner, as you said, in the law firm of Hunton & Williams, and I have practiced environmental law for over 17 years. And for the past decade, my practice has focused almost exclusively on climate change.

On August 3, EPA released three rules to limit carbon dioxide emissions from power plants. The most controversial rule regulates those emissions from existing power plants under section 111(d) of the Clean Air Act. EPA also released a proposed federal plan to implement the existing power plant regulations, accompanied by two model trading rules, one for a mass-based cap-and-trade program and one for a rate-based cap-and-trade program.

The third rule regulates carbon dioxide emissions from new, modified, and reconstructed power plants under section 111(b) of the Clean Air Act. All of these regulations will be published in tomorrow's Federal Register, and they all suffer from legal

deficiencies that are certain to be subject to litigation.

With regard to EPA's final rule for existing power plants under section 111(d), that rule continues to suffer from numerous legal deficiencies, including the two issues that I raised before this subcommittee in March. The first issue is whether EPA even has authority under section 111(d) to issue the regulations for existing power plants in light of the fact that electric-generating units are already regulated under section 112 of the Clean Air Act, which addresses hazardous air pollutants.

The second issue is whether EPA's final regulations for existing power plants can properly be considered to be a system of emission reduction under the Clean Air Act, even assuming EPA has authority to issue a section 111(d) rule for electric generating units.

The proposed federal plan seeks to implement the regulations for existing power plants in the form of a cap-and-trade program for States that do not submit acceptable state plans. The accompanying model trading rules seek to provide rules that States can adopt to be part of a cap-and-trade program. Because the underlying regulations are unlawful, the proposed federal plan and model trading rules also cannot be lawfully promulgated.

With regard to the final regulations for new, modified, and

reconstructed power plants, it should be noted that the emissions rate for these new plants is higher than the rates for existing power plants. This has never before been the case.

The new source regulations also suffer from legal infirmities. For example, the final performance standard for new coal-fired power plants is based on the use of post-combustion; partial carbon capture and sequestration, or CCS; and requires that carbon dioxide be captured, compressed, and safely stored over the long-term. CCS has not been adequately demonstrated.

In the final rule, EPA improperly relies on projects that received funding under the Energy Policy Act of 2005 to find that CCS is adequately demonstrated, which violates that act. The only project that EPA cites that did not receive such funding is a small Canadian unit that does not provide adequate support for EPA's determination.

In addition, the subcommittee should be aware that a legal prerequisite for regulation of existing sources under section 111(d) is that their first must be regulation of the same new sources under section 111(b). This means that if the final regulations for new power plants are overturned by a court, the legal foundation for EPA's regulating existing power plants would disappear.

All of these legal issues give rise to a great deal of uncertainty regarding all three rules and cast serious doubt over whether they will be able to survive review by the courts. In the meantime, however, anyone wanting to build a new power plant must comply with the standards for new sources. For existing sources, States face a firm September 6, 2016, deadline for the submission of a state plan or an extension request, or they face the risk of the federal cap-and-trade program being imposed on them.

Meanwhile, the owners of existing power plants have to begin preparing as though they are going to have to comply with the rule. These preparations take many years, and the owners of the power plants do not have the luxury of waiting to see whether these rules would survive legal review.

Thank you again for the opportunity to testify today.

[The prepared statement of Mr. Lin follows:]

********** INSERT 2 **********

Mr. Whitfield. Thank you, Ms. Wood, very much.

And our next witness is Mr. Richard Revesz, who is the Lawrence King Professor of Law and Dean Emeritus and Director of the Institute for Political Policy Integrity at New York University School of Law. You are recognized for 5 minutes, Mr. Revesz.

STATEMENT OF RICHARD REVESZ

Mr. Revesz. Mr. Chairman and members of the subcommittee, I am very grateful to have been invited again to testify before this subcommittee. I will discuss why EPA's flexible cost-minimizing approach to setting performance standards for existing power plants is consistent with the Clean Air Act and the Constitution.

First, EPA has authority to implement the Clean Power Plan under section 111(d) of the Clean Air Act. Interpreting section 111(d) presents an unusual situation because in the 1990 amendments, the House and the Senate each used different language in amending the same statutory provision, and the two amendments were never reconciled in conference. Both amendments appear in the final bill reported by the conference committee. Both amendments were approved by both chambers and signed by the President, and both amendments appear in the Statutes at Large. Both amendments are, therefore, the law of the land.

Opponents of the Clean Power Plan argue because a House amendment appears in the U.S. Code, it should be the controlling version. However, it is well-established that when the Statutes at Large and the U.S. Code conflict, the text in the Statutes at

Large controls.

The decision to include only the House amendment in the U.S. Code was made by a staff member in the Office of the Law Revision Counsel, but this staff member cannot supplant the will of Congress. In fact, to follow the approach urged by the opponents of the Clean Power Plan would lead to a serious constitutional problem. Law would be made without following the constitutional requirements of bicameralism and presentment. The Supreme Court made clear in Immigration and Naturalization Services v. Chadha that such an approach would be unconstitutional.

Opponents also argue the House amendment should take precedence because the Senate amendment was labeled as a conforming amendment in the Statutes at Large. However, the courts have made clear that such labels are irrelevant and that an amendment labeled conforming may well be substantive. Moreover, the House amendment itself is labeled as miscellaneous guidance. This label lends no more substantive weight than the conforming label attached to the Senate amendment.

Opponents further argue the Senate amendment should be ignored because a line in the Senate report states that the Senate recedes to the House, but the Senate managers explicitly indicated the statement was not reviewed or approved by all the members of

the conference committee, and the language pertains only to the section of the bill where the House amendment appears and does not address the section where the Senate amendment appears. And perhaps most significantly, regardless of this language, the Senate amendment remained in the text of the bill and was ultimately approved by both chambers and signed by the President. A statement in a Senate report cannot override expressed statutory language.

Furthermore, even if one does assume that the House amendment controls, EPA still has the power to issue the Clean Power Plan. Opponents argue the House amendment forbids EPA from regulating greenhouse gas emissions from existing power plants under section 111(d) because EPA has already regulated emissions of hazardous air pollutants from the same plants under section 112. However, as EPA has thoroughly explained in the Clean Power Plan, the House amendment is subject to multiple interpretations.

Under its interpretation, which is entitled to deference, EPA cannot use section 111(d) to regulate pollutants that it already regulates under section 112, but it can invoke section 111(d) to regulate sources that are already regulated under section 112, as long as a different polluted is at issue.

Second, there is no merit to the beyond-the-fence-line

arguments made the opponents of the Clean Power Plan. EPA's approach is consistent with the relevant statute provision under which EPA must determine the best system of emission reduction for the regulated sources. It is important to underscore that the product at issue in the Clean Power Plan is electricity, not electricity generated from coal. So it is appropriate for EPA to base its determination of the best system of emission reduction for power plants on a shift from more carbon-intensive forms of electricity generation to ones that are less carbon-intensive.

Of course, in doing so EPA must comply with all the relevant statutory factors. In particular, it must consider cost and energy requirements, and it must show that the standard is adequately demonstrated. EPA explained in great detail that the Clean Power Plan meets each of these statutory requirements.

Decades of agency practice have shown that standard of performance can involve shifting from a dirtier method of producing a product to a cleaner method of reducing the same product. For example, EPA has issued standards and guidelines requiring the owners of solid waste combustors to implement recycling and material-separation programs designed to reduce the use of the combustors themselves.

The 1997 standards and guidelines for medical waste

incinerators require the units' owners to develop waste management programs that could include paper, cardboard, plastics, glass, battery, or metal recycling, and were designed to reduce the volume of waste to be incinerated and thereby reducing the amount of air pollution emissions associated with the waste.

EPA's approach to the regulation of interstate pollution under the Clean Air Act's Good Neighbor provision, which was upheld by the Supreme Court last year in EPA v. EME Homer City Generation, lends further support to the Clean Power Plan. The Good Neighbor provision by its terms imposes requirements on particular sources that cause interstate problems. But EPA, under administrations of both parties for a period of two decades has interpreted that provision --

Mr. Whitfield. Excuse me, Mr. Revesz, I have let you go over over a minute, so if you could wrap it up.

Mr. Revesz. Twenty seconds.

Mr. Whitfield. Thank you.

Mr. Revesz. EPA, under interpretations of both parties for a period of two decades, has interpreted that provision to allow sources to meet their emission-reduction obligations collectively through participation in emission-trading schemes,

much like the ones that the Clean Power Plan contemplates.

I am very grateful to have been invited and will be delighted to answer any questions you might have.

[The prepared statement of Mr. Revesz follows:]

********** INSERT 3 **********

Mr. Whitfield. Thank you very much.

And our next witness is Ms. Emily Hammond, who is Associate Dean for Public Engagement and Professor of Law at George Washington University School of Law. Thank you, Ms. Hammond. You are recognized for 5 minutes.

STATEMENT OF EMILY HAMMOND

Ms. Hammond. Thank you, Chairman, and thank you, distinguished members of the committee, for having me back to testify before you.

Today, I will speak primarily about how EPA's CO2 regulations relates to the electricity markets and why the regulations are important from a policy standpoint. I will also address the regulatory framework underlying the Clean Air Act and the legality of EPA's regulations.

Delivering electricity to consumers involves a complex interaction between energy resources and markets and the physical needs of the grid. The electricity markets operate on the basis of short-run marginal costs, but in doing so, they fail to value fuel sources' reliability or environmental attributes. This has resulted in a variety of dysfunctions.

To take one example, consider nuclear power. It is clean, reliable, and safe, but it is struggling to operate in the wholesale markets notwithstanding these beneficial attributes. Without policies that fold reliability and environmental attributes into the electricity markets, we will see decreased diversity in our mix of electricity sources. This threatens both

grid reliability and our ability to flexibly respond to the climate change imperative.

EPA's CO2 regulations represent measured approaches to correcting some of these flaws. Could EPA have done more? Yes. And, as Mr. Rush commented, this institution could do even more. But EPA's new regulations do make headway toward correcting fuel sources' environmental externalities while also promoting diversity of resources on the grid.

The Energy Information Administration projects that the electricity fuel mix of 2040 will be more diverse under the CPP, the Clean Power Plan, than it is today. It will include a larger share of renewables, non-generation resources, and natural gas. It continues to include nuclear. And contrary to popular perception, it will still include a significant amount of coal. Overall, the CO2 regulations take a step toward a cleaner portfolio of sources that are complementary to one another in maintaining grid reliability.

The key point is that energy decision-making must include consideration of the relative mix of fuel sources, as well as the environmental implications of that mix. Given the current suite of statutes related to energy and the environment, no federal agency is better suited to undertake that task than EPA.

When this institution passed the Clean Air Act and its various amendments, it recognized that Congress cannot anticipate every future air pollution problem. The statute is crafted to permit EPA, which has the expertise, to regulate air pollution consistently with the purposes of the statute. And EPA has done so here.

With respect to the regulations for new power plants, EPA has properly exercised its discretion to regulate CO2 from fossil fuel sources given its finding upheld in federal court that greenhouse gases endanger the public health and welfare.

With respect to EPA's authority under section 111(d), I submit that in addition to the reasons provided by Professor Revesz, a reviewing court should uphold EPA's regulations by taking the approach that the Supreme Court used in King v. Burwell, the Affordable Care Act decision. There, the court determined that the issue was too important to leave to the shifting whims of the executive branch, and the court itself interpreted the provision at issue consistently with legislative intent. A reviewing court should do the same here. It should hold that EPA's regulations are consistent with the Clean Air Act's purposes of protecting public health and welfare, and in so doing, we can take a step in the right direction toward better grid reliability

and climate change mitigation.

Thank you again for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Ms. Hammond follows:]

********** INSERT 4 **********

Mr. Whitfield. Thank you, Ms. Hammond.

Our next witness is Mr. Raymond Gifford, who is a partner at Wilkinson Barker & Knauer. And we appreciate your being with us. You are recognized for 5 minutes.

STATEMENT OF RAYMOND L. GIFFORD

Mr. Gifford. Thank you, Mr. Chairman, members of the committee. I appreciate the opportunity to speak to you today about the Clean Power Plan.

My focus today is going to be on the stateside implementation of the rule. What is the rule mean for States, how will state institutions need to be reorganized to deal with the rule, and what will States do in practice based on the rule's design and incentives?

First, the traditional state institutional arrangements for the electricity sector will need to be changed to comply with this rule.

Second, the rule will gain and is gaining prescriptive authority while the legal challenge is pending. Absent a stay of the rule, States and utilities must move forward with resource planning that incorporates the carbon-reduction mandates of the rule.

Third, the design of the rule inexorably leads States toward adopting a plan of mass-based trading. This is popularly known as cap-and-trade. In addition, States will face strong incentives to undertake what the EPA calls "state measures"

meaning state legislation authorizing new renewable and energy efficiency programs will be a compelling compliance path.

Let me explain to the committee how this might well play out. The ambition of this rule toward the electric sector is totalistic. That is, it needs to fundamentally reorder the traditional federal-state division in the power sector, enforce rearrangement of the state institutions dealing with electricity. In practice, this means that prerogatives that once belonged to state utility commissions or under the self-regulatory models of rural cooperatives and municipal utilities give way to state-unified carbon resource planning under the auspices of the state air regulator.

My second point is that States and utilities are already incorporating the assumptions and carbon rations in the rule into their resource-planning decisions. The planning horizons in the electric power industry extend out 7 to 10 years and further. That means to meet the interim goal in 2022, a utility needs to make the decision soon, if not now, whether or not to retire generation, replace coal with gas-fired generation, or to begin substantial increases in renewable-generating capacity.

In recent months, the Trade Press has noted utilities submitted integrated resource plans that put them on a path toward

compliance under the rule's assumptions. The rule, therefore, is having its effect before the legality is ruled upon by the courts.

Finally, I want to point the committee to where the rule is headed as a matter of state compliance. When you study the rule, the States are essentially presented with a Hobson's choice where the most palatable and achievable state plan is a mass-based trading platform across the region or across the country. Though the term may be politically laden, the States will inevitably gravitate to a national cap-and-trade platform instituted through each state plan.

As the Agency makes plain in the final rule "the EPA believes that it is reasonable to anticipate that a virtually nationwide emissions-trading market for compliance will emerge and that ERCs will be effectively available to any affected EGU wherever located, as long as its state plan authorizes emissions trading among affected EGUs."

For those uninitiated with the rather ineuphonious acronym ERC, that means emission reduction credit. EPA anticipates a nationwide ERC trading system whereby carbon emissions are capped by the rule and then traded across the States to achieve compliance. This is nationwide cap-and-trade.

However, there are reasons to believe that mass-based carbon trading will be a heavier lift that past trading programs. For one, the size of the transfer payments required will be larger than ever before seen. The net effect of the rule has to make a generator prefer to shut down or reduce output rather than buying ERCs.

Second, we can expect a great deal of special pleading to break out in the States surrounding ERC allocations under state plans. Coal-centric smaller utilities without much scale -- say, a municipal utility or cooperative -- will advocate for low-cost or no-cost ERC allocations under state plans. Indeed, government-run markets often feature these special set-asides for favored constituencies.

In closing, I hope I have given the committee a sense of the legal and policy complexity confronting the States and want to underscore the fact that compliance with the rule's carbon rationing starts now.

[The prepared statement of Mr. Gifford follows:]

********** INSERT 5 **********

Mr. Whitfield. Thank you, Mr. Gifford. And thank all of you for your testimony.

At this time, we will open it up for questions, and I will recognize myself for 5 minutes of questions to begin with.

Some people have made the argument that the challenges to the Clean Power Plan have been soundly refuted by the courts already, some people say that these are frivolous lawsuits, and some people say that they have already been rejected. So I would ask Mr. Lin and Ms. Wood, has the court really addressed the Clean Power Plan in a legal way at this point?

Mr. Lin. Thank you, Mr. Chairman.

The lawsuits I think that you are referring to, two of them that were brought by West Virginia last year and then earlier this fall, given what we read as the clear illegality of the rule, we thought that these were efforts worth making to save massive amounts of taxpayer dollars both at the federal level and at the state level to stop EPA from even moving forward what is, in our belief, an unlawful rule no matter what form it takes.

The courts have not ruled on the merits of our arguments. The courts have only ruled on the procedural grounds as to whether the lawsuits were --

Mr. Whitfield. And was that because the regulation had not

been printed in the Federal Register so it was not final? Was that the reason for the ruling or was there another reason?

Mr. Lin. That is, in short, the reason on the first one. The second one was slightly different and involved the timing of publication. But yes, it was essentially that it was not final, and it will be final tomorrow.

Mr. Whitfield. Do you have a comment, Ms. Wood?

Ms. Wood. No. Mr. Lin has covered it.

Mr. Whitfield. Okay. So it will be final tomorrow, so lawsuits would be proper at that time, is that correct?

Ms. Wood. Yes, under section 307(d) of the Clean Air Act, once a final rule by EPA is published in the Federal Register, it may be challenged in the D.C. Circuit.

Mr. Whitfield. Okay. Now, is it true -- I have heard the arguments, I have read the various memos, there have been statements about this in the hearings -- that EPA actually reversed its legal opinion within the department about whether or not it could regulate under 111(d)? Is that your understanding? Is that correct or is that not correct?

Mr. Lin. Well, the one thing that -- and I mentioned this in my oral testimony that they have changed is they have, for 25 years since the amendments in 1990, taken the position that the

text of the 112 exclusion that is in the U.S. Code is clear, and they have always had one reading of that. Now, as Professor Revesz has mentioned, they have said that there is this two-amendment theory that makes it ambiguous, but they have always had one reading of the text that is in the United States Code.

In the final rule they have taken a brand-new position that they now do not think that that text is clear, that they don't understand it, it is ambiguous, and based on that, have come up with a new reading of the text.

Mr. Whitfield. You are not speaking for EPA. I am assuming they have a goal that they want to reach. Their traditional legal opinions would not get them to that position, so they have got to invent a new legal authority to give them the position to use the power to use 111(d) is what I would assume it. They can't get there any other way.

Mr. Lin. Well, as you said, Mr. Chairman, I can't speculate as to what EPA was thinking, but there was a lot of commentary and litigation on the two-amendment theory, and they have now relegated that theory to a footnote as an alternative.

Mr. Whitfield. And basically, they are not really arguing the two-amendment theory anymore, I don't believe.

Mr. Lin. That is not their primary basis.

Mr. Whitfield. I mean they have even admitted in documents that the substantive amendment is the one and not the conforming amendment.

Mr. Lin. Back in the early '90s when they promulgated the landfill rule under section 111(d), they said that the substantive amendment, which is the one that originated in the House and is in the U.S. Code, is the controlling amendment.

Mr. Whitfield. Right. Now, the bottom line is I am assuming what they are arguing now is that CO2 is not listed as a hazardous air pollutant, and therefore, they can regulate under 111(d). Would that be where they are on this?

Ms. Wood. Yes. Basically, what EPA is now saying -- and you are correct, Mr. Chairman, that they have changed their position on this -- is that you only are precluded from regulating under 111(d) if the pollutant in question is listed under 108 as a criteria air pollutant, which CO2 is not. And if under 112 you are listed as a source category and the pollutant is regulated -- and it is that last part that is new; it used to just be is the source category regulated --

Mr. Whitfield. Right.

Ms. Wood. -- this source category is regulated under 112.

Mr. Whitfield. There is no question about that.

Ms. Wood. No, there is not.

Mr. Whitfield. And so the issue is CO2 is not listed as a hazardous air pollutant, so that is an argument, which good lawyers do to make up to win their case, I am assuming. Okay.

My time is expired. Mr. Rush?

Mr. Rush. Well, thank you, Mr. Chairman.

Dean Hammond, in your testimony you say that it is important to have policies in place that are both environmentally conscious and that place a premium on reliability, and you cite nuclear power as a clean, reliable, and safe fuel source but one that is struggling to operate in the wholesale markets. In your professional opinion, are the New Source Performance Standards and the CPP examples of reasonable policy approaches to increasing greenhouse gas emissions while also keeping the lights on?

And the second part of the question is how does this plan impact the value of the Nation's nuclear fleet in States such as Illinois and others who rely heavily on nuclear power plants?

Ms. Hammond. Thank you, Mr. Rush. First of all, the Clean Power Plan and the New Source Performance Standard do take a step toward ensuring that our electricity sources incorporate those negative externalities so that the market operates more efficiently.

Do I wish the EPA had done more for nuclear power? Yes. It could have gone farther and it didn't. It does provide credits for new nuclear construction, but it doesn't really incentivize the reactors that are currently struggling to stay open, and that is something for which more could be done.

Mr. Rush. Does the CPP mandate any particular approach for States to reduce their carbon emissions, or is there flexibility for States to take measures based upon each State's circumstances and the work that is already undertaken?

Ms. Hammond. One of the strengths of the Clean Power Plan is that it provides flexibility for the States.

Mr. Rush. Well, can you elaborate -- I am interested in your recommendations or your desires for the EPA to further incentivize and protect and propagate nuclear power plants. Can you give us some examples of some ideas that you might have wanted to see the EPA promote as it relates to nuclear power?

Ms. Hammond. Sure. So, as I mentioned, the Clean Power Plan does give States credit for new nuclear construction. It also gives States credit for upgrading existing plants. But it doesn't really recognize that we have significant portions of the fleet that are having trouble on these wholesale markets because of the market dysfunctions that I have identified. And so to have

given credits to States for keeping those plants open would have been a very beneficial step toward encouraging that fleet to stay in place.

Mr. Rush. I want to thank you very much for your testimony.

Mr. Chairman, I want you to note that I have given 1 minute and 27 seconds of the 3 minutes that I used in excess for an opening statement, so I want to get credit for that.

Mr. Olson. [Presiding] So noted. The gentleman yields back.

I recognize myself for 5 minutes for some questions.

Before I ask a few questions, last week, the grid operator in my home State of Texas, ERCOT, released a report on the Clean Power Plan, the CPP, and its impacts on our State's grid. ERCOT is nonpartisan. They have one job, to keep the lights on for all Texans they serve. Here are a few of their quotes about the CPP's impact in my home State: "ERCOT estimates that the final CPP, by itself, will result in the retirement of at least 4,000 megawatts of coal generation capacity. This amount of unit retirements could pose challenges for maintaining grid reliability, and these impacts are likely to intensify when the effects of the CPP are combined with other environmental regulations."

ERCOT continued, "energy costs for consumers may increase by up to 16 percent by 2030 due to the CPP alone without accounting for the associated costs of transmission upgrades, higher natural gas prices caused by increased gas demand, procurement of additional ancillary services, and other costs associated with the retirement" of plants.

I ask unanimous consent to submit ERCOT's report for the record. Without objection.

[The information follows:]

********** COMMITTEE INSERT **********

Mr. Olson. So costs are going up without any explanation from EPA about the benefits. A few weeks ago, EPA's clean air guru Janet McCabe could not give me any details at a recent hearing about the impacts of the CPP on our climate. And this was despite the fact that she admitted that a major driver for the CPP is climate change. She started dancing, danced around questions on temperature and sea level because she had no answer.

Take time to read EPA's Regulatory Impact Analysis. You will find no specifics because they don't know. They do know that this sweeping rule threatens my home State's grid, and it may violate the Clean Air Act.

My first questions are for you, Ms. Wood, and you, Mr. Lin. For the first time ever, EPA is proposing a rule which goes beyond the fence line. Mr. Lin mentioned in his opening statement, but please share your thoughts and details of the legal impacts of this new rule and what kind of precedent it sets for future actions by EPA. Ms. Wood, you get the first crack, ma'am.

Ms. Wood. Thank you. As I described to the subcommittee the last time I was here, there is an analogy that I think makes it easier for, you know, most people to understand what is going on here. And when you start talking about the grid and, you know, shifting dispatch, et cetera, I think it is difficult to

understand. So an easier way to think about it, the analogy is with cars. And I am not suggesting that EPA could regulate cars under section 111. In fact, it couldn't. Those are regulated under a different title of the Clean Air Act.

But what EPA is doing here is akin to instead of just saying we are going to put, you know, a catalytic converter on your car to limit air pollutants, which would be permissible -- that would be the equivalent of building block 1 here where they are doing energy efficiency -- we are also going to require that 1 or 2 days a week if it is available to you, you need to take public transportation. You need to take the bus or the train. That is equivalent to what is happening with the re-dispatching to gas. And what EPA is saying here is if you have sufficient capacity to generate your electricity using natural gas, you must do that.

And then the final thing that EPA is doing is it is now dictating what kind of car you can buy and it says that, say, for example every third car you buy, it must be electric. And here what they are saying is you have to build a lot more renewable solar and wind generation.

The one thing that EPA did do between the proposal and the final rule would be to eliminate building block 4, which was going to require programs be put in place to force consumers to reduce

their use of electricity. EPA has now conceded that it can't force consumers to do that and that the owners and operators of power plants can't have that done. So that has been removed, but that at the time was equivalent to requiring folks to telecommute.

Mr. Olson. In the spirit of bipartisanship, I am over 45 seconds, so to follow my friend's lead here, I yield back and now recognize the ranking member of the full committee, Mr. Pallone from New Jersey.

Mr. Pallone. Thank you.

We have heard quite a few hyperbolic legal arguments today, so I would like to spend some time setting the record straight in my opinion. Since 1970, the Clean Air Act has had several key features that have helped make it one of the most successful environmental laws on the books. Science-based, health-protective standards keep our eye on the prize: healthy air for everyone. Cooperative federalism allows EPA to set the clean air goals and States decide how best to achieve them. EPA retains backstop enforcement authority ensuring that every citizen of the United States receives the minimum level of protection from environmental risks even if their State fails to act.

Now, some have claimed that this cooperative federalism

arrangement violates the Tenth Amendment. I have heard from one of the panelists it basically says that if States refuse to submit state plans, EPA will impose its own federal plan imposing a federal takeover of the generation of interstate energy. Essentially, that is what -- I don't know if it is a direct quote but one of the panelists essentially said that.

So I just want to ask Professor Revesz, does the Clean Air Act's state plan-federal plan provisions, essentially this cooperative federalism, violate the Constitution in your opinion?

Mr. Revesz. Thank you, Mr. Pallone. It does not. In fact, the federal state allocation responsibility under section 111(d) is exactly the same as the allocation of responsibility for meeting the National Ambient Air Quality Standards with State Implementation Plans. These are the centerpiece of the Clean Air Act as you noted, and they have been in place since 1971. So this is a 44-year history that has served us very well, has saved tens of thousands of lives every year.

Section 111(d) by its terms says, "the administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title," which is the State Implementation Plan provision under which the National Ambient Air Quality Standards are met. So we have been doing this for

44 years.

There is no constitutional problem because the States are not required to do anything. They are given an option. They can come up with state plans if they wish to do so, and if they don't, the Federal Government has the authority to implement the Federal Implementation Plan. In fact, under the Clean Power Plan, unlike under the National Ambient Air Quality Standards, EPA has made clear that it will not withhold highway money. There will not be highway sanctions for States that refuse to put together state plans.

So there is no compulsion here. This is in no way similar to any of the cases that were decided in which commandeering of state institutions was at issue. This is a plain vanilla cooperative federalism program of the sort that we have had for almost half-a-century.

Mr. Pallone. All right. Let me just ask you quickly this next one because I want to ask Professor Hammond something. Is the Clean Power Plan any different than previous Clean Air Act rules?

Mr. Revesz. Well, it is different in that it is directed at greenhouse gases. It is not different in many of the ways that were discussed earlier. As I indicated, the Good Neighbor

provision is implemented by EPA through a broad cap-and-trade system, and it has been done by the administrations of Presidents Clinton, George W. Bush, and Barack Obama for over 20 years. I mentioned the incinerator rule where owners of incinerators are required to come up with recycling plans.

The features that have been found or have been said to be problematic by the Clean Power Plan can find historical antecedents in other Clean Air Act programs over a period of several decades implemented by administrations of both political parties.

Mr. Pallone. All right. Let me ask Professor Hammond, Robert Nordhaus recently said that "although global warming likely wasn't on the minds of lawmakers working on the Clean Air Act in 1970, they were aware that the science of air pollutants was still evolving and 111(d) was written to account for this issue, that the statute itself, in my views, anyway, it was really designed to be forward-looking."

So, Professor Hammond, what do you think about this comment? Is the flexibility reflected in the regulatory framework that Congress established in the Clean Air Act?

Ms. Hammond. Yes, it is. And I agree with that comment. Just to the terms, air pollutant, as we know from the Supreme

Court's decision in Massachusetts v. EPA, is a capacious term. It is meant to accommodate new circumstances in the future. And with respect to section 111(d), it is meant to fill a gap. If a pollutant is not regulated as a criteria pollutant or as a toxic, this is the place for EPA to do that. And so it is meant to have a holistic approach to air pollution.

Mr. Pallone. All right. Thank you very much.

Thank you, Mr. Chairman.

Mr. Olson. The gentleman yields back.

The chair recognizes the gentleman from Illinois, Mr. Shimkus.

Mr. Shimkus. Thank you, Mr. Chairman. I am going to go and talk to and ask Mr. Gifford a line of questions.

Is it correct that the proposed rule and the final 111(d) rule EPA scaled back its expected carbon dioxide reduction for existing coal plant efficiency improvements?

Mr. Gifford. Yes.

Mr. Shimkus. And so from what your report or your testimony says from 6 percent to 2.1, that is 4.2 percent depending upon the region of the country. With lower performance requirements for actual existing sources, I would assume that EPA would produce smaller carbon dioxide reduction mandates, but that is not the

case. EPA actually increased the overall carbon reduction mandates under the rule. Is that correct?

Mr. Gifford. That is correct.

Mr. Shimkus. Are the carbon dioxide caps derived from what can be achieved at existing fossil fuel-fired power plants?

Mr. Gifford. No. In fact, the increased carbon dioxide reductions in EPA's, you know, carbon rationing, you know, methodology all come from increased assumptions of an addition of renewable capacity to the grid.

Mr. Shimkus. I had a similar line of questions in the last hearing we had, and there is really terrible faulty assumptions, and we are going to continue on this line of questioning.

My understanding is that you have examined the numbers and identified that EPA assumes a massive increase in renewable energy to reach its carbon reduction mandates. Can you explain what assumptions EPA appeared to use to generate its assumed massive growth of renewables?

Mr. Gifford. Sure. How EPA increased the final carbon budget for each State while changing the methodology to reduce the amount of carbon reductions they could get from building blocks 1, 2, and eliminating building block 4, is what they said is let's assume that you can add renewable resources at the largest

historic number from years 2010 to 2014 that have been added to capacity year-over-year, and let's assume that is potential to add that amount of renewable energy year-over-year from 2025 to 2030. Where they really got that number high and pumped it up is if you picked, as EPA did, the year 2012 when we added twice the amount of wind to the system that we did in any other year historically.

Mr. Shimkus. And I agree with you. How do EPA's assumptions stack up against -- and I used this agency last time, too -- the U.S. Energy Information Administration's assumption for renewables over the same period?

Mr. Gifford. EPA is larger by about a factor of 2.

Mr. Shimkus. Yes. And we found that to be true in the last hearing.

If EPA is overestimating its renewable energy assumptions in its baseline, is it underestimating the potential impacts of the rule?

Mr. Gifford. Well, based on what EPA is calculating, which is a best system of emission reduction, if you can't conceivably add that much renewable at least notionally, you are obviously imposing far too heavy a carbon reduction budget than is actually feasible.

Mr. Shimkus. And that is why it is significant, right --

Mr. Gifford. Correct.

Mr. Shimkus. -- because it is just an unachievable analysis of where we can get to.

Mr. Gifford. Yes. And, Congressman, the reason that the year 2012 was so anomalous in the amount of wind that was added nationally was because there was a dash to add wind because of the expected expiration of the production tax credit. So if you look at the amount of wind capacity added year-over-year in that time period, all of a sudden 2012 pops way up by a factor of 2. Then, EPA takes that number and then you use that number year-over-year to show potential carbon reduction.

Mr. Shimkus. So what might we see in the electricity sector if EPA's assumptions about renewables are wrong and the energy information agencies are correct and there is a smaller renewable build-out?

Mr. Gifford. Well, I think what you will probably see is less renewable energy than is actually assumed by EPA. What you will probably see more practically is a, you know, massive build-out of new gas plants and gas capacity because that is the simplest and most reliable way to do it. Now, that is not free but that is, I think, probably the first option given many of the

issues that Professor Hammond mentioned about nuclear, which isn't really on the table these days for the reasons she mentioned.

Mr. Shimkus. Which I wish they were also.

And with that, Mr. Chairman, thank you. I yield back.

Mr. Olson. The gentleman yields back.

The chair recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. McNerney. Well, I thank the chairman.

And this is a hearing that I don't think we really need to have, but we will go ahead.

Mr. Lin, West Virginia's moving forward with the lawsuit regarding the Clean Power Plan basically unless the EPA were to withdraw the plan. You are going to go forward with that lawsuit, is that correct?

Mr. Lin. Congressman, my boss the Attorney General has made very clear that we intend to challenge the rule, together with a growing bipartisan coalition of States.

Mr. McNerney. So what would be the ideal outcome of your lawsuit?

Mr. Lin. Well, in any kind of a challenge like this, what you are looking for is a vacatur of the rule and remand to the Agency. And so, you know, under the two arguments that I have

articulated today, the EPA doesn't have the authority to do what it is doing, and so the rule should be struck down.

Mr. McNerney. So in other words, you would stop the Administration from curbing carbon dioxide emissions altogether?

Mr. Lin. Well, what we would do is we would corral the Agency within its statutory authority. I think the question of, you know, whether this is good policy is an entirely different question. I don't think there is --

Mr. McNerney. Because that would be the effect. It would curb the Administration's ability to curb carbon emissions?

Mr. Lin. It would stop this particular rule from going forward.

Mr. McNerney. Well, Mr. Revesz, how long do you think the adjudication is going to be lasting on these lawsuits?

Mr. Revesz. There will be a case filed at the D.C. Circuit. It will then depend whether the D.C. circuit, after having a decision by the panel, takes the case en banc. I assume --

Mr. McNerney. Is your microphone on?

Mr. Olson. Microphone on, please, sir.

Mr. Revesz. All right.

Mr. Olson. Thank you.

Mr. Revesz. It would go before the D.C. Circuit first. The

length of time will depend on whether once the panel of the D.C. Circuit decides the case, whether the whole court decides to take it en banc, I assume that whoever loses in the D.C. Circuit will petition the court for cert. If the court grants cert, it will add time.

So I would say that it would take between 1 and 3 years to get this case finally adjudicated depending on various moving pieces.

Mr. McNerney. But didn't the EPA delay some provisions of the Clean Power Plan about that length of time?

Mr. Revesz. Yes, EPA delayed two provisions. It delayed the period for state compliance. It is true, as Ms. Wood indicated, the period. The States have to comply in roughly a year, but very easily they can get a 2-year extension. It is very, very easy for States to do that and EPA basically said it was essentially a pro forma thing. So EPA essentially added 2 more years from the proposed rule to the final rule. And it also delayed the period for compliance by roughly the same period of time.

Mr. McNerney. Do you feel that a hearing like this can have any impact on the adjudication?

Mr. Revesz. I don't think so. I mean this case will be up

the courts. I assume that by tomorrow or Monday it will be before the courts, and the judges will interpret the statute in the way they see best. I don't think they will be affected by this conversation.

Mr. McNerney. Thank you.

Ms. Hammond, would you tell us how the Clean Power Plan has addressed the reliability issue?

Ms. Hammond. Yes. The Clean Power Plan relies on the interconnected nature of the grid to promote reliability even with some shifts in our electricity fuel sources. It relies on the fact that the grid is built to be resilient by connecting electricity generation from all sorts of fuel sources. By also correcting at least some of those market dysfunctions, it permits those other fuel sources to compete, at least some of them to some extent, on those markets in a way that further promotes reliability because diversity is important to the reliability of the grid as well. Different fuel sources have different characteristics that enable not only baseload but peak demand can be met as well.

Mr. McNerney. So you do feel like their provisions for reliability will be effective in helping to ensure that we have reliable electricity?

Ms. Hammond. Yes. I think that the lights will stay on.

Mr. McNerney. Thank you. That is all, Mr. Chairman.

Mr. Olson. The gentleman yields back.

The chair recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. Latta. Well, thank you, Mr. Chairman. And to our panel, thanks very much for being here today.

Mr. Lin, if I could ask my opening questions to you. You argue that the 111(d) rule was unlawful, would not withstand judicial scrutiny. How is EPA's rule influencing electricity-sector planning today?

Mr. Lin. Thank you, Congressman. I think that is a very good question. And maybe the best place to look at it is -- well, to answer the question directly, I think it is having a tremendous effect. The utilities, as I understand it, have a very long time line in terms of what they do in terms of their planning and their decision-making. And of course the States are taking steps as well.

And I think the thing to take note of is what happened recently with what has been commonly called the MATS decision, the Mercury and Air Toxics Standards under Section 112. That litigation, sort of consistent with what Professor Revesz said,

took 3 years from publication of the rule to the Supreme Court decision this last June. And after the EPA lost that decision, which they did, they said, to reassure their supporters, that it was not really a big deal because a majority of the power plants were already in compliance.

And that gives us great pause and great concern about the decisions that are already happening here, and that compliance is going to happen before judicial review is completed. And we could have what essentially amounts to a Pyrrhic victory.

Mr. Latta. Well, thank you very much.

Mr. Gifford, would you like to comment?

Mr. Gifford. No, I think Solicitor General Lin is exactly right. In recent weeks we have seen what are called Integrated Resources Plans, which are plans that utilities file with the state utility commission that have been presented that incorporate the assumptions of the rule. And that is what a prudent utility has to do given their planning horizons.

So as Solicitor General Lin said, if you are an electric-generating unit or a vertically integrated utility right now, you have to, in your planning process, incorporate your carbon budgets that EPA has handed you. And I think the same thing is happening is if this rule were overturned by the Supreme Court

in 2018, 2019, you could have a situation where a good chunk of the Nation's coal fleet is already scheduled to be retired under state planning processes.

Mr. Latta. Thank you. Mr. Lin, back to you if I may. If I understand your testimony, you indicate the rules are a disguise for broader regulatory planning. Would you like to elaborate on that?

Mr. Lin. Thank you, Congressman. I think the thing to look at is building blocks 2 and 3, and the way that EPA itself describes them is those are about substituting electric generation of another type, whether it is natural gas under building block 2 or renewables under building block 3, for coal-fired power plants. So they use those building blocks to set the target level of emissions reduction, so they are assuming in their calculation that there will be a shift in the kind of energy generation.

There has been a lot of talk today about flexibility and that the States are being given flexibility and that they don't have to do these particular things, but the fact of the matter is the reductions that are being required build in these assumptions of shifting generation. And if you look at my State of West Virginia, we have to meet a 37 percent emissions reduction, and we rely almost entirely on coal-fired energy. So practically

speaking, there is no way to get where they want us to go without shifting from one type of generation to another.

Mr. Latta. Thank you.

Ms. Wood, under the construct of section 111, is the power plant the source of the pollution or is the electricity the source of the pollution?

Ms. Wood. Thank you, Congressman. That is an excellent question. The title of section 111 is standards of performance, you know, for sources. And the source is in fact here the electric-generating unit. It is not the product that that electric-generating unit produces, which is electricity. It is whatever the thing is that is actually creating the emissions. So in the case of a power plant, it is the electric-generating unit. If you were talking about a petroleum refinery, it would be the refinery. It wouldn=t be the gasoline that it made. And that is how it is controlled and that is how section 111 works.

Mr. Latta. Well, thank you very much.

And, Mr. Chairman, I see my time is about ready to expire and I yield back.

Mr. Olson. The gentleman yields back.

The chair recognizes the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

One of the current statements those who oppose the Clean Power Plan keep making is that this rule mandates, mandates an emissions-trading scheme. As I read it, there is no mandate to use emissions trading as the way to meet the standard. Assistant Administrator McCabe confirmed that at the hearing about 2 weeks ago. And it was the utilities and system operators who advocated for including this compliance option in the final rule, not just state governments that were already participating in these systems.

So my question to you, Mr. Revesz, is is there anything in the Clean Air Act that precludes States from using an emissions-trading system to achieve compliance with this rule?

Mr. Revesz. There is nothing in the Clean Air Act, Congressman, that would preclude States from doing that. And in fact, under other really important programs of the Clean Air Act like the Good Neighbor provisions, we already use trading schemes of that sort. And the Supreme Court a year ago upheld that program.

Mr. Tonko. Thank you. And is there anything in the Clean Air Act that prevents EPA from allowing emissions trading as an option for achieving compliance?

Mr. Revesz. There is not, Congressman, and EPA has done that in the past under other programs.

Mr. Tonko. Thank you. And we keep hearing that this rule is unprecedented. Well, considering that it is the first time that EPA has regulated carbon emissions specifically from power plants, that is true, but hasn't EPA regulated other emissions by, for instance, setting mass or rate limits for new and existing sources?

Mr. Revesz. EPA has. It is very clear that the term standard of performance -- which actually the statute doesn't say standard of performance for a source; it is just standard of performance -- does not involve necessarily the use of end-of-pipe technologies. It can involve changes in production processes. If there are three ways of producing the same product and one way is a lot dirtier than other ways, EPA can decide that a standard of performance is to produce the product in a cleaner way. EPA and the courts have made very clear that changes in production processes are a perfectly fine way of meeting standard-of-performance requirements.

Mr. Tonko. Thank you. Given that the States are given flexibility to achieve compliance with pollution limitation through the preparation of individual state plans, I would believe

that offers great flexibility --

Mr. Revesz. It does.

Mr. Tonko. -- to our States? And further, Assistant Administrator McCabe also confirmed that two of the factors that led EPA to include emissions trading as an option in the final rule are 1) the extensive experience that States and power plants already have with emissions trading, and 2) a strong interest on the part of many States' utilities and grid operators in using emission trading to help meet their obligations. Is that not true?

Mr. Revesz. That is true. Once the limitations are set, trading provides a lower-cost way of meeting the requirement, and that is why market operators find it attractive.

Mr. Tonko. Well, thank you. I think this is noted in the preamble to the rule, and I think it just needs to be further clarified. And so I appreciate your response to the questions concerning whether or not there is a mandate that is brought to bear with an emissions-trading scheme that is placed on all the operators out there.

So with that, I thank you for the clarification. And, Mr. Chair, I yield back.

Mr. Olson. The gentleman yields back. The chair would like

to announce when the bells ring, we have votes being called. That will be about an hour, so we intend to recess for an hour, try to do two more questions, one Republican, one Democrat after the bell rings. So calm down, okay?

I now recognize Mr. McKinley from West Virginia for 5 minutes.

Mr. McKinley. Thank you, Mr. Chairman.

Mr. Gifford, there is a Mildred Schmidt in every community of West Virginia, and I am just curious if West Virginia does indeed have to reduce its CO2 emissions by 37 percent, is Mildred Schmidt going to have to pay more for her electricity?

Mr. Gifford. Without a doubt.

Mr. McKinley. Okay.

Mr. Gifford. Right. And that is the feature of this rule to the proponents is it induces you to close down your coal-fired power plants.

Mr. McKinley. Thank you.

Ms. Wood, 111(b) is based on the use of carbon capture and storage. I just had the opportunity to visit China and India to inspect their carbon capture facilities, and the officials there have already determined that CCS is not commercially viable, and they are not going to implement it on their people, recognizing

the cost that they would be burdened with. And there are none in America operating commercially, is that correct?

Ms. Wood. That is correct. Right now, there are none.

Mr. McKinley. So 111(b) is a predicate for 111(d). I that not correct?

Ms. Wood. Yes, it is.

Mr. McKinley. If 111(b) is struck down, what is going to be the impact on 111(d)?

Ms. Wood. You can't have a 111(d) existing-source rule without first having or simultaneously having a 111(b) new-source rule. So if the new-source rule were struck down, regardless of everything we are talking about, the legal infirmities of the 111(d) rule, it would not have its legal foundation and could not exist.

Mr. McKinley. I just find this incredible that major producers, major users of coal are saying it is just not commercially viable. So we will follow up with that.

Mr. Lin, in your testimony you raised a remark about the building blocks. Some of the building blocks are illegal partially because they are aimed at reducing the use of coal-fired energy. Could you elaborate a little bit on that?

Mr. Lin. Of course. There are two points I think that are

worth making. The first is that the scope of EPA's power under section 111(d) is to set standards that lead to standards of performance. And we are talking about performance of individual coal-fired power plants.

And one thing that I wanted to address is Professor Revesz has said a number of times, you know, that he has got a lot of examples talking about the method of producing the product and that there is plenty of precedent for that. Well, that belies I think an important distinction here. EPA is not talking about changing the method of -- at these particular -- the method of generating electricity is a very, very different question from shifting generation from one power plan to some other power plan. And so I think, you know, all of his examples talk about ways to improve operations at one particular facility, and that is what we are talking about. That is the scope of authority under 111(d), and that is not what they have done here.

Mr. McKinley. Okay. Again, Mr. Chairman, in consideration of the time, I yield back the balance of my time.

Mr. Olson. The gentleman yields back. The chair recognizes the gentlelady from -- sorry, the gentleman from Texas, Mr. Green, slipped in there.

Mr. Green. I thank my neighbor. Mr. Chairman, I would like

to place a short statement into the record so I can go straight to questions.

[The information follows:]

********** COMMITTEE INSERT **********

Mr. Green. Professor Revesz, I have repeatedly stated it makes more sense to address climate change by legislation without congressional action. However, federal agencies have acted under existing authority. There are many attorneys in Washington and around the country doing very well advising their clients on the version of the House and Senate amendments to the Clean Air Act or the law.

In their relatively recent Supreme Court decision, what is your view on whether Congress spoke directly to that question at issue? Do you believe that the court will rule with the Agency on interpretation?

Mr. Revesz. As long as an agency interpretation is not inconsistent with the clear intent of Congress, the court, under traditional doctrines, will defer to the Agency's interpretation. And in this case, the Clean Air Act talks about the regulation of air pollutants. The Congress in 1970 didn't specify which those were because it understood over time the science around air pollutants would change. The Supreme Court in 2007 held that greenhouse gases are air pollutants. And then the Administration in 2009 found that they endangered public health or welfare, and therefore needed to be regulated under the existing provisions of the Clean Air Act.

Mr. Green. Okay. The EPA believes that the House bill's exclusion from 111(d) apply only to hazardous air pollutants, not any air pollutant. What are your thoughts on that?

Mr. Revesz. As I indicated in my opening statement, I think EPA has interpreted this statute in the correct way, that if sources' emissions are regulated under section 112, that same emission can't be regulated under section 111(d) as well. But if a source's hazardous emissions are regulated under section 112, the other emissions of a source can be regulated under section 111(d) because otherwise it would be a gap in the Clean Air Act that Congress didn't intend.

Mr. Green. How willing has the court been to apply Chevron in cases in the past? Is there any indication that the court would lean this way again or would a pending case offer a new point of view?

Mr. Revesz. Well, legal scholars have debated this for many, many years. My own view is that this case will get the traditional Chevron deference, as EPA cases have been getting since the Chevron case was decided in 1984.

Mr. Green. Okay. Ms. Hammond, isn't there a major difference between Burwell and a potential Clean Power Plan case, namely that the Affordable Care Act had already taken hold across

the Nation and the CPP is newly finalized?

Ms. Hammond. Well, it is true that the CPP is newly finalized, but I think the issue for how a court would interpret the statutory provisions and decide about deference to the agency doesn't hinge on that particular factual scenario.

Here, I agree that Chevron deference would be appropriate in this situation, but I think a court could also decide the issue is too important to leave to the Agency, in other words, promote regulatory certainty. If a court holds that a statute has a particular meaning, then they Agency is not free to change that meeting later, and the Supreme Court here should interpret this section 112 exclusion issue to permit EPA's regulations here. And taking that route would promote the regulatory certainty and let everybody know, yes, it is time to implement the Clean Power Plan.

Mr. Green. Mr. Chairman, I will yield back so somebody else can have time before we go vote.

Mr. Olson. The gentleman yields back.

The chair recognizes the gentleman from West Virginia, Mr. Griffith, for 5 minutes, and then recognize Mrs. Capps for 5 minutes. Then, we will go vote.

Mr. Griffith. Okay. Thank you very much, Mr. Chairman.

I would note that while I love the people of West Virginia and my district borders them, I come from the original Commonwealth of Virginia and not our separated segment thereof.

That being said, we have heard arguments even today that in interpreting section 111(d) of the Clean Air Act we should treat a technical conforming amendment produced by the Senate as equal to a substantive House amendment that prevailed in conference on the 1990 Clean Air Act amendments. We know the Senate receded to the House with respect to this language.

What people may not remember but provides important context is that the language that the House judged to be appropriate was initially proposed by the President of the United States. He proposed the language that excludes dual regulation of sources in his formal submission of proposed Clean Air Act amendments to Congress in the summer of 1989. The language to prevent dual regulation of sources under section 111(d) and other sections was intentional and a substantive amendment to the act.

Mr. Chairman, I would like to enter into the record the cover page of the message from the President and the actual revision to section 111(d) that President Bush, the first President Bush, proposed and Congress ultimately adopted.

Mr. Olson. Without objection.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

[The information follows:]

********** COMMITTEE INSERT **********

Mr. Griffith. Thank you, Mr. Chairman. I appreciate that.

Mr. Lin, you state in your testimony that in the context of the Clean Air Act amendments of 1990, Congress was particularly concerned about electric-generating units being subject to double regulation. Can you elaborate?

Mr. Lin. Yes, Congressman. In the legislative history, as recounted by EPA itself, there is tremendous concern about power plants being subject to double regulation. One piece of evidence of that is section 112 and 1(a), which is the provision that carved out power plants for special treatment with regard to hazardous air pollutants. And it said, as opposed to other major stationary sources, it did not automatically subject power plants to 112 regulation, but instead it said that EPA was to do a study to assess the effect of other parts of the Clean Air Act and to determine whether regulation of power plants was appropriate and necessary.

Mr. Griffith. Okay. I appreciate that. You know, it is kind of interesting. Mr. Shimkus earlier said that when Acting Assistant Administrator McCabe was in, she started dancing around. I had a similar problem when we were talking. She insisted that this was not a cap-and-trade scheme, and yet I have heard most of you -- I think the only one I haven't heard say that it was a cap-and-trade process or program was Ms. Hammond. So,

you know, it was curious. I speculated they are just so afraid that the negative connotations to cap-and-trade the American public holds is why she wouldn't give me that, but I asked her in several different ways isn't this going to be a cap-and-trade scheme? She refused to use those words. Mr. Lin, predominantly isn't this a cap-and-trade program?

Mr. Lin. Well, as I said in my opening statement, I think it is clear that what EPA is doing is trying to drive States toward cap-and-trade. And they say at several points in the preamble that emissions trading is a critical part of their analysis. The federal --

Mr. Griffith. And in fact, Ms. Wood -- and I am sorry. I am just looking at the clock.

Mr. Lin. That is okay. Of course.

Mr. Griffith. Ms. Wood, I note that I think you said that they had two different types of cap-and-trade plans within their preamble that they mentioned that they promote. Isn't that correct?

Ms. Wood. Yes, that is correct.

Mr. Griffith. But they are still cap-and-trade plans, isn't that right?

Ms. Wood. They are. One is mass-based and one is

rate-based, and the State can choose, but at the end of the day, you have a cap on your emissions.

Mr. Griffith. Now, the question that I then followed up with Ms. McCabe and we have heard some testimony on today is if the State just says we are not doing anything, do you, Mr. Lin, see this as the EPA coming in and then forcing a cap-and-trade program on the State that doesn't do anything?

Mr. Lin. If the federal plan stays the way that it has been proposed, there will be a federally imposed cap-and-trade system.

Mr. Griffith. I also thought it was interesting, Mr. Lin, that you brought up the MATS rule. On that border between West Virginia and Virginia was a little place called Glen Lyn plant in Virginia that closed on, I believe, May 1 of this year. And the ruling from the Supreme Court saying that, because of MATS -- it was aging and all that is true, but it was closed because of the MATS rule. On May 1 it had to close down. I lost another plant in Clinch River, which is close to West Virginia and probably provides some power to your State as well as mine, but the ruling came out on June 28 saying the EPA had overstepped its authority. Isn't that accurate?

Mr. Lin. That is correct.

Mr. Griffith. And, Mr. Gifford, these power companies are

having to make these decisions well in advance, and as a result of that, they are building all kinds of gas pipelines, isn't that true, across the country?

Mr. Gifford. Absolutely. They have to.

Mr. Griffith. Can you put that on the record?

Mr. Gifford. Yes. Absolutely. They have to.

Mr. Griffith. All right. Because we have got a lot of gas pipeline opponents in my district. They need to know where it is coming from. It is coming from this Clean Power Plan of the Administration.

I yield back.

Mr. Olson. The gentleman yields back.

The chair recognizes the gentlelady from California, Mrs. Capps, for 5 minutes.

Mrs. Capps. Thank you, Mr. Chairman, for holding the hearing. I thank the witnesses for your testimonies.

I would like to think that we are making progress in this discussion, but unfortunately, we have repeatedly heard the same story. We keep going over the same questions. While I do appreciate there are a wide range of opinions on this topic, the science is clear. Human activities are producing vast amounts of carbon dioxide, and these are contributing to global climate

change.

Furthermore, the energy sector is the leading source of emission for carbon dioxide in the United States, and as a country, we have an obligation in my opinion to contribute to national and worldwide reductions of greenhouse gases. Given our status as a global superpower, we have an obligation to lead this charge. Unfortunately, we spend more time debating the scientific consensus on climate than identifying and implementing tangible solutions.

But here is the bottom line: Our dependence on fossil fuels is driving climate change, and we need to take bold action to curb carbon pollution and move toward a clean sustainable energy future.

So, Professor Revesz, we have heard on multiple occasions from the majority that the costs associated with the Clean Power Plan will be exorbitant, yet you have stated that this plan will have reasonable costs and in fact will return significant benefits. Would you please expand on how you have come to this conclusion?

Mr. Revesz. Well, EPA has estimated that the net benefits -- that is benefits minus costs -- of the Clean Power Plan, range between 26 and 45 billion a year in 2030, and that is because the

Clean Power Plan has two big categories of benefits. One is the benefit that comes from greenhouse gas reductions, and the other is health benefits to come to citizens of the United States.

By 2030 and every year after that, the Clean Power Plan is expected to avoid 3,600 premature deaths, 1,700 heart attacks, 90,000 asthma attacks, and 300,000 missed days of work and school. Those are the benefits. There are costs, about $8.4 billion a year. And the benefits minus the costs yield a net benefit of between 26 and $45 billion a year starting in 2030.

Mrs. Capps. That is pretty precise, too. And as a former school nurse, I can relate to the increased asthma costs and some other health-related matters in southern California where I am from.

Professor Hammond, you referred to the negative environmental externalities of power generation and the fact that the Clean Power Plan and CO2 regulation would lead to a more diverse energy generation landscape in the future. I have had some experience with this recently in my district on the central coast of California with two leading academic institutions that are spawning all kinds of new industry. Can you please elaborate on how, given the flexibility of the regulations, States will be able to meet the regulatory requirements with existing

technology?

Ms. Hammond. Yes. Not only can they ask for fuel switching, but they can also innovate or encourage innovation related to electricity storage, which of course your State is a leader in, also demand-response and efficiency programs. So there are many ways for States to flexibly meet the requirements.

I want to emphasize that the building blocks are not what is required. States have the flexibility to meet their standards in ways that make sense for those States. And everything is on the table for the States.

Mrs. Capps. Right.

Ms. Hammond. It is very flexible.

Mrs. Capps. It is a very timely period of time right now, isn't it, very critical to see with this flexibility what can happen. Given the incentive for clean power development, do you see these regulations encouraging the development of new energy technology?

Ms. Hammond. Absolutely. That is something to be excited about with the Clean Power Plan, and it is also consistent with the Clean Air Act, which has always, since the '70s, been designed to encourage newer, cleaner technology.

Mrs. Capps. I am going to try one more question. I hope

we can make it.

Professor Revesz, are there any reasons to expect the States will not be able to achieve the targets outlined in the Clean Power Plan?

Mr. Revesz. No. The targets are very reasonable, and in fact, on average, the States are already about halfway there of the 32 percent reductions from the 2005 baseline the Clean Power Plan expects by 2030. We have already achieved about 15 percent of the 32 percent. And we are basically on a path to achieve further reductions, even absent the Clean Power Plan.

Mrs. Capps. I think that is a very exciting prospect, and, you know, I am impressed that we are on this track. We want to continue this. We want to resume our position as global leaders. In renewable energy we have a ways to go, but what you have said today is very encouraging.

I yield back. And thank you, Mr. Chairman, for squeezing me in.

Mr. Olson. The gentlelady got it done.

Mrs. Capps. We got it done. Thank you.

Mr. Olson. We will reserve. We will go in recess right now, come back in about an hour. This committee is in recess.

[Recess.]

Mr. Olson. We will come to order. Thank you all so much for coming back. As you can see, no Members we expected to come back, but I have one final question for you, Ms. Wood. Can you explain this Good Neighbor provision that Professor Revesz talked about? Does it really support the Clean Power Plan, the CPP? Last question.

Ms. Wood. Thank you. The Good Neighbor provision is part of the NAAQS program, the National Ambient Air Quality Standard provision. It is part of section 110 of the Clean Air Act. It is different. And what that provision covers is the attainment of National Ambient Air Quality Standards. And the way that States can do that is much more broad than under section 111, which is the standards of performance for sources. So it can encompass many more things than a standard of performance can. It is not as limited to the source or limited to an emission rate. It works differently. It is a completely different program.

Mr. Olson. Thank you for that clarification.

Okay. In conclusion, I would like to thank so much all the witnesses, the Members for coming and for taking part in today's hearing. I remind Members that they have 10 business days to submit questions for the record and ask that witnesses all agreed to respond promptly to those questions.

This subcommittee is adjourned.

[Whereupon, at 5:02 p.m., the subcommittee was adjourned.]