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4 EPA'S PROPOSED 111(d) RULE FOR EXISTING POWER PLANTS, AND

5 H.R. ____, RATEPAYER PROTECTION ACT

6 TUESDAY, APRIL 14, 2015

7 House of Representatives,

8 Subcommittee on Energy and Power

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:04 a.m.,
12 in Room 2123 of the Rayburn House Office Building, Hon. Ed
13 Whitfield [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Whitfield, Olson,
15 Barton, Shimkus, Pitts, Latta, Harper, McKinley, Pompeo,
16 Kinzinger, Griffith, Johnson, Long, Elmers, Flores, Mullin,

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17 Hudson, Upton (ex officio), Rush, McNerney, Engel, Green,
18 Capps, Doyle, Castor, Sarbanes, Yarmuth, Loeb sack, and
19 Pallone (ex officio).

20 Staff present: Nick Abraham, Legislative Clerk; Gary
21 Andres, Staff Director; Charlotte Baker, Deputy
22 Communications Director; Leighton Brown, Press Assistant;
23 Allison Busbee, Policy Coordinator, Energy and Power; Tom
24 Hassenbochler, Chief Counsel, Energy and Power; Alexa
25 Marrero, Deputy Staff Director; Mary Neumayr, Senior Energy
26 Counsel; Christine Brennan, Democratic Press Secretary; Jeff
27 Carroll, Democratic Staff Director; Michael Goo, Democratic
28 Chief Counsel, Energy and Environment; Caitlin Haberman,
29 Democratic Professional Staff Member; Rick Kessler,
30 Democratic Senior Advisor and Staff Director, Energy and
31 Environment; and John Marshall, Democratic Policy
32 Coordinator.

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|
33 Mr. {Whitfield.} Good morning. I would like to call
34 this hearing to order. And this morning's hearing is going
35 to begin with a discussion of the Ratepayer Protection Act, a
36 draft bill that would add several commonsense safeguards to
37 the EPA's proposed 111(d) rule for existing power plants, and
38 which is referred to by the agency as the Clean Power Plan.

39 I want to welcome Acting Assistant Administrator McCabe,
40 as well as a diverse group on the second panel representing
41 those impacted by the proposed rule. And I just want to make
42 the comment that we appreciate your being here, Ms. McCabe,
43 very much. As you know, we have fundamental, divisive,
44 really different views on this particular rule, but we do
45 look forward to your testimony. We will have a lot of
46 questions, and appreciate you being here with us.

47 And now I would like to recognize myself for a 5-minute
48 opening statement.

49 I would like to say that in reading Ms. McCabe's
50 testimony, I was struck by the comment that she was not aware
51 of any instance in the last 25 years when Congress has
52 enacted legislation to stop implementation or stay

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53 implementation of an air rule during a judicial review. To
54 do so here she said would be an unprecedented interference
55 with EPA's effort to fulfill its duties under the Clean Air
56 Act. Now, I believe the key word in her statement is
57 unprecedented. Anyone familiar with the Clean Air Act should
58 not in any way be surprised that Congress would try to stop,
59 slow down or, as Ms. McCabe said, interfere with efforts to
60 rush implementation of the rule for existing source
61 performance for electric generating units. Why? We think
62 you are overstepping your authority. We think you are now
63 legislating. Experts in the Clean Air Act have described
64 this proposed rule as extreme, radical, and power grab. One
65 of the best characterizations of the rule was stated by
66 Professor Laurence Tribe, the highly regarded liberal scholar
67 of constitutional law at Harvard University. Since this rule
68 is more about changing energy policy than anything else, he
69 said burning the Constitution should not be a part of our
70 national energy policy.

71 Whoever thought EPA would be attempting to become the
72 energy tsar for America. Professor Tribe said, at bottom,
73 the proposed rule hides political choice, and frustrates

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74 accountability. It forces states, forces states to adopt
75 policies that will raise energy costs, and proved deeply
76 unpopular once the people realized what is happening, while
77 cloaking these policies in the garb of state choice, even
78 though, in fact, the policies are set and compelled by EPA.

79 The EPA thumbs its nose at democratic principles by
80 confusing the chain of decision-making between federal and
81 state regulators to avoid transparency and accountability.

82 Now, when EPA Administrator Gina McCarthy testified
83 before the Senate Environment and Public Works Committee on
84 July 23, 2014, she said, the great thing about the power
85 plant is that it is an investment opportunity. This is not
86 about pollution control. And the regulatory impact analysis
87 of the proposed rule states that the impact of reduced
88 climate effects has not been quantified. In other words, EPA
89 does not claim that the proposed rule would affect the
90 climate in a significant way. However, Ms. McCabe, in her
91 testimony today, says we must address climate change. It is
92 common mantra in the Administration, from the President
93 through every political appointee, and yet this unprecedented
94 rule, which will increase electricity rates, affect

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95 reliability, cost millions of dollars, make EPA the energy
96 tsar for America, will not have a significant impact on
97 climate change. Everyone acknowledges that fact. So that
98 raises the question why is EPA, at the direction of the
99 President, rushing it through? EPA obviously wants this
100 completed before the 2016 elections. Is it being done to
101 create a legacy in the international arena for President
102 Obama? Perhaps someone has decided it is urgent that the
103 electricity business in America be radically changed.
104 Experts familiar with this process have been taken aback by
105 the convoluted arguments that have been developed to
106 legitimize this proposed rule. As far as we know, it is the
107 first time in the history of EPA where the agency lawyers
108 felt compelled to include a separate legal justification for
109 the rule. 104 pages, to be exact.

110 So we find ourselves in a situation where EPA, not
111 Congress, is writing a new law, state Attorneys General are
112 filing suit to stop EPA, state regulators are pleading for
113 help, electric generating companies are facing uncertainty,
114 consumers are finding electricity rates going up, and no one
115 knows for sure what the impact will be on reliability or, for

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116 that matter, the real reason this regulation is being rushed
117 to market.

118 In the history of the Clean Air Act, EPA has never been
119 this bold. So if actions are not delayed by Congress, or if
120 they are affirmed by the courts, EPA will fundamentally
121 redefine and reshape its regulatory reach for the next
122 generation of rule makers in a way typically reserved for
123 legislative bodies.

124 So with the very utmost respect, people are asking
125 Congress for help in reining in this agency, and that is why
126 we have introduced this legislation, and we look forward to
127 comments about it.

128 [The prepared statement of Mr. Whitfield follows:]

129 ***** COMMITTEE INSERT *****

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|
130 Mr. {Whitfield.} At this time, I would like to
131 recognize the distinguished gentleman from Illinois, Mr.
132 Rush, for his opening statement.

133 Mr. {Rush.} Well, thank you, Mr. Chairman. And I also
134 want to extend my compliments to Acting Assistant
135 Administrator, Ms. McCabe. I want to welcome your appearance
136 at this committee--subcommittee hearing.

137 Mr. Chairman, I want to also thank you for holding this
138 hearing today on what you have called the Ratepayer
139 Protection Act for 2015. Mr. Chairman, a more appropriate
140 and fitting title for this legislation before us would be the
141 Just Say No to the Clean Power Plan Act, which is a fitting
142 description of what this legislation attempts to do. The
143 bill seeks to delay and ultimately get rid of the Clean Power
144 Plan by extending all compliance deadlines to all legal
145 challenges decided by the court. Here we go again.

146 Under this legislation, the time period for all Clean
147 Power Plan compliance and submission deadlines would be
148 extended until 60 days after the final rule appears in the
149 Federal Register, and only after, and I quote, ``judgment

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150 becomes final and no longer subject to further appeal or
151 review.'" When is that supposed to happen, Mr. Chairman?
152 That is the question. Again, to delay is to deny, and this
153 certainly is the Just Say No bill. Just Say No to the Clean
154 Power Plan Act.

155 Mr. Chairman, at first glance, this bill--the purpose of
156 this bill's language may seem innocuous. In effect, what
157 this bill will actually do is unnecessarily stall and delay
158 implementation of the Clean Power Plan, and also it will spur
159 countless and, in most cases, frivolous and meritless
160 challenges to the plan in order to extend the ultimate
161 compliance time. Just Say No. To delay is to deny.

162 Another problem with this legislation is that it will
163 effectively give governors veto power over the federal
164 requirements of the Clean Power Plan if they decide that
165 their states don't want to do this, don't want to cooperate,
166 don't want to comply with the plan, and the plan would have
167 an adverse effect on even the state's ratepayers or the
168 reliability of its electricity system. Unfortunately, Mr.
169 Chairman, allowing governors to join in this attempt to just
170 say no to the Clean Power Plan will fly in the face of

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171 decades of the Clean Air Act's use of cooperative federalism
172 which has been so successful in moving our nation forward,
173 and protecting our air and protecting our environment.
174 Additionally, Mr. Chairman, there is no need to provide a
175 safe harbor for states who cannot or will not form plans to
176 bring their states into compliance with the Clean Power Plan,
177 as this bill attempts to do because already under current
178 law, the EPA sets the emission reduction goals under Section
179 111(d), and it is up to the states themselves to decide how
180 to best achieve these reductions. However, Section 111(d)
181 states that if states refuse to present a plan that will
182 reduce carbon emissions from existing power plants, then the
183 EPA--rural EPA will step in with a federal 111(d) plan to
184 ensure that these environmental risks are addressed to the
185 benefit of this nation as a whole.

186 Mr. Chairman, it would indeed set a dangerous precedent
187 to most Clean Air Act and to the overall public health if
188 Congress were to enact a law that would allow 50 governors to
189 simply veto federal environmental policy that they did not
190 like or that they do not agree with. The Clean Air Act use
191 of cooperative federalism has set a cornerstone in moving our

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192 nation forward in its environmental protection policy, and
193 this bill has the potential to be star potential to undo
194 decades worth of progress that we have seen and witnessed in
195 this area. The provisions in this bill will make it too easy
196 for a governor to just say no to reducing harmful emissions
197 from power plants, the number one emitters of carbon dioxide,
198 if they found that these regulations would be too burdensome
199 to enact.

200 Mr. Chairman, I think we should think long and hard,
201 consider what we are doing before we go down this slippery
202 slope to give individual states the power to turn back the
203 clocks to the dark days on what we have been so very
204 successful so far in terms of our environmental protection
205 policy.

206 Mr. Chairman, this is a bill that, frankly, doesn't
207 really deserve our time, because this bill is so
208 inappropriate on its face.

209 Thank you, and I yield back the balance of my time.

210 [The prepared statement of Mr. Rush follows:]

211 ***** COMMITTEE INSERT *****

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|
212 Mr. {Whitfield.} Gentleman doesn't have any time, but
213 thank you for your comments.

214 And at this time, I would like to recognize the chairman
215 of the full committee, Mr. Upton, for 5 minutes.

216 The {Chairman.} Thank you, Mr. Chairman. I want to
217 thank the witnesses, and appreciate their input regarding the
218 Administration's controversial Clean Power Plan. No less an
219 expert than Laurence Tribe has testified that this proposed
220 rule exceeds EPA's statutory authority, and raises numerous
221 constitutional issues. In addition, more than half the
222 states have questioned the legality and feasibility of EPA's
223 attempt to micromanage each state's electricity generation,
224 transmission, distribution and use. So if you think of the
225 Clean Power Plan as the Obamacare approach applied to state
226 electricity systems, you would not be very far off the track.

227 Like the health law, the costs of the Clean Power Plan
228 ultimately fall on consumers and job creators who are certain
229 to see their electric bills go up, and for many states the
230 rate increases will be, indeed, significant.

231 As highlighted in Mr. Trisko's testimony, Michigan

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232 residents can expect rate increases up to 15 percent. This
233 would come at the worst possible time as folks are starting
234 to get back on their feet. Rate hikes will impose unwelcome
235 hardships on family budgets, inflict damages to businesses
236 both large and small, hamper job growth, and impact certainly
237 the most vulnerable.

238 The Ratepayer Protection Act's reasonable and targeted
239 provisions will greatly reduce the major risks to ratepayers
240 from the Administration's plan. First, the bill extends the
241 compliance deadlines until after judicial review is
242 completed. Given that so many states have raised serious
243 concerns about the legality of EPA's proposed rule and a
244 dozen have already sued, it makes sense to clear things up
245 legally before the rule's costly and complex requirements
246 take effect.

247 The Ratepayer Protection Act also provides each state
248 governor with the authority to protect its ratepayers to the
249 extent a state or federal plan under the rule would have a
250 significant adverse effect by contributing to higher
251 electricity costs or threatening reliability. States, not
252 the EPA, should have the last word with respect to the

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253 affordability and reliability of their electricity systems.
254 On the other hand, those state governors who are supportive
255 of EPA's proposed rulemaking and anticipate no problems with
256 it are free to comply with the agency's demands. Go right
257 ahead.

258 In northern states like Michigan, affordable and
259 reliable electricity is absolutely essential to making it
260 through the winter months. And America's manufacturing
261 sector could not survive without electricity rates that allow
262 it to be globally competitive. In fact, the National
263 Association of Manufacturers has warned that higher costs as
264 a result of the Clean Power Plan and other recent EPA rules
265 could place domestic manufacturers at a global disadvantage.
266 That is real. The commonsense protections in the Ratepayer
267 Protection Act are critical to preserving both our standard
268 of living and our economic future. In making these
269 decisions, governors must consult with their state's energy,
270 economic, health, and environmental authorities. States can
271 and should be a necessary check on EPA's otherwise one-sided
272 authority to change a state's electricity system, and to do
273 so without regard to the consequences.

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274 This bill, the Ratepayer Protection Act, is a sensible
275 approach to addressing the very serious problems with the
276 Administration's plan. Washington certainly does not always
277 know best, and I would urge my colleagues to join the effort
278 on behalf of jobs and affordable energy.

279 And I yield back the balance of my time.

280 [The prepared statement of Mr. Upton follows:]

281 ***** COMMITTEE INSERT *****

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|
282 Mr. {Whitfield.} Gentleman yields back.

283 At this time, I would like to recognize the gentleman
284 from New Jersey, the ranking member of the full committee,
285 Mr. Pallone, for 5 minutes.

286 Mr. {Pallone.} Thank you, Mr. Chairman. Today's
287 hearing on a bill to gut the President's Clean Power Plan is
288 misguided and unfortunate. I do not support this
289 legislation, and urge members to closely examine its harmful
290 effects on our country's progress to combat damaging
291 pollution and catastrophic climate change.

292 First, let me thank the Assistant Administrator McCabe
293 for being here today. I understand that EPA received over 4
294 million comments on the proposed Clean Power Plan, and that
295 you, Administrator McCarthy and the agency's staff are
296 working day and night to review and consider those comments.

297 EPA did an unprecedented amount of outreach to states,
298 industry, and stakeholders when developing the proposal, and
299 the agency has continued its outreach. This includes an
300 ongoing series of listening sessions with the Federal Energy
301 Regulatory Commission, and EPA is also actively working with

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302 the states, grid operators, public utility commissions and
303 electricity suppliers of all kinds to finalize a rule that
304 works for everyone, especially ratepayers.

305 Like all proposed rules, the agency is considering the
306 justness of the Clean Power Plan based on comments and
307 stakeholder feedback. For example, the draft bill's
308 implementation timeline won't begin until 2020, but because
309 of feedback EPA is considering modifications to allow
310 additional flexibility to states to help address questions of
311 timing, reliability, and other implementation issues. And
312 for that reason, I believe the Clean Power Plan is amenable
313 reasonable and achievable, and EPA is clearly committed to an
314 open dialogue to ensure its success.

315 Meanwhile, the bill before us seeks to undermine all
316 that work. Under the current Clean Air Act and the proposed
317 Clean Power Plan, no state has to submit a state plan, so
318 giving governors the option to opt out of developing a state
319 plan doesn't change anything. However, and this is
320 important, this bill would give governors the option to opt
321 out of a federal plan which EPA must implement if a state
322 fails to act. In that respect, we should view this bill for

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323 what it really is; an amendment to the Clean Air Act, which
324 would overturn the principle of cooperative federalism that
325 has been in place for more than 40 years. This cooperation
326 is essential to ensure all Americans are protected from
327 environmental harm, even if the actions of their home state
328 fall short. Under this bill, large sources of carbon
329 pollution could be exempt from any meaningful restrictions
330 and, therefore, bad states get a free ride to pollute without
331 any consequences, while every other state foots the bill.

332 Finally, this bill would automatically delay
333 implementation of the Clean Power Plan by extending all
334 deadlines by the amount of time it takes litigation to
335 conclude. That blanket extension gives all--would be given
336 to all polluters regardless of whether their legal arguments
337 turn out to have any merit.

338 As we heard at our last hearing, EPA does, in fact, have
339 authority for the Clean Power Plan that will ultimately be
340 upheld by the courts, but this bill would provide an
341 incentive for polluters to run the clock on litigation so all
342 deadlines will be extended as long as possible, no matter how
343 frivolous the challenge and regardless of the outcome. And

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344 this is an incredibly reckless and dangerous precedent to set
345 with regard to any law, in my opinion.

346 I think the republicans don't--you know, they refuse to
347 accept the fact that climate change is real, and that
348 Congress should be taking action to address it. The effort
349 by republicans on this committee to push states to say no,
350 and refuse to cooperate with EPA is reckless and dangerous.
351 The New York Times referred to it as, and I quote, ``a
352 travesty of responsible leadership.' ' Meanwhile, former Bush
353 EPA Administrator and New Jersey republican, and I stress
354 republican, Governor, Christine Todd Whitman, characterized
355 this effort as having both the possibility to undermine our
356 nation's entire rule of law.

357 States should begin the careful process of moving to
358 cleaner, cheaper and more reliable electric power systems.
359 The Clean Power Plan is a modest and flexible proposal. If
360 my republican colleagues have a better idea for protecting
361 against the changing climate then please speak up. Just
362 saying no and condemning future generations is not an option.

363 And I want to--I don't know if anybody else wanted to
364 have a minute left on our side. If not, Mr. Chairman, I

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365 yield back.

366 [The prepared statement of Mr. Pallone follows:]

367 ***** COMMITTEE INSERT *****

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|

368 Mr. {Whitfield.} Gentleman yields back, and that
369 concludes the opening statements.

370 So at this time, I would like to formally introduce Ms.
371 Janet McCabe, who is the Acting Assistant Administrator for
372 the Office of Air and Radiation at the EPA. And once again,
373 welcome, Ms. McCabe. And I would like to recognize you for 5
374 minutes for your statement.

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|
375 ^STATEMENT OF THE HONORABLE JANET MCCABE, ACTING ASSISTANT
376 ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S.
377 ENVIRONMENTAL PROTECTION AGENCY

378 } Ms. {McCabe.} Thank you, Chairman Whitfield, Ranking
379 Member Rush, and members of the subcommittee. I appreciate
380 the opportunity to testify before you today on EPA's proposed
381 111(d) rule for existing power plants, also known as the
382 Clean Power Plan, and the discussion draft of the Ratepayer
383 Protection Act of 2015.

384 The discussion draft and EPA's proposed carbon pollution
385 plan share--reflect a shared concern maintaining the
386 reliability of the electricity grid. Clean Air Act
387 regulations have not caused the lights to go out in the past,
388 and the proposed Clean Power Plan will not cause them to go
389 out in the future.

390 This morning, I will talk about EPA's proposal and how
391 the final rule will address many of our shared concerns, and
392 my written testimony provides additional feedback regarding
393 the discussion draft.

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394 To summarize, EPA views the draft as premature, because
395 EPA has not yet finalized the Clean Power Plan; unnecessary,
396 because EPA has the tools and, indeed, the obligation to
397 address cost and reliability issues in our final rule; and
398 ultimately harmful, because the bill, if enacted, would delay
399 or prevent the climate and air quality benefits of the Clean
400 Power Plan.

401 This summer, EPA will be finalizing a flexible,
402 commonsense program to reduce carbon pollution from the power
403 sector; the largest stationary source of CO2 emissions in the
404 country, while continuing to ensure that all Americans have
405 access to affordable, reliable energy, and a clean and
406 healthy environment. However, EPA's long history developing
407 Clean Air Act pollution standards for the electric power
408 sector, including the proposed Clean Power Plan, the agency
409 has consistently treated electricity system reliability as
410 absolutely essential. We have devoted significant attention
411 to this issue ourselves, and have also made sure that we were
412 working with stakeholders and energy regulators at the
413 federal, state and regional levels to ensure that the
414 important public health and environmental protections

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415 Congress has called for are achieves without interfering with
416 the country's reliable and affordable supply of electricity.

417 In crafting the Clean Power Plan proposal, EPA sought to
418 provide a range of flexibilities and a timeline for states,
419 tribes and territories, and affected generators that would
420 reduce carbon emissions while maintaining affordable electric
421 power and safeguarding system reliability. EPA's proposed
422 plan gives states the opportunity to choose, and allows
423 electric generators to choose from a wide variety of
424 approaches to cutting emissions, and is intended to provide
425 states, generators and other entities charged with ensuring
426 electric reliability with the time they need to plan for and
427 address any reliability issues they believe may arise. This
428 same wide range of approaches also provides states and
429 utilities with the latitude they need to minimize cost.

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

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436 has provided a tremendous amount of information and ideas,
437 and I assure you the EPA is taking all of that information
438 and those suggestions, the comments I have provided very
439 seriously, and we expect to make changes to the proposal to
440 address many of the suggestions and concerns we have
441 received. Ideas offered by stakeholders range from ensuring
442 that initial compliance expectations and compliance
443 flexibilities provide the states the latitude they need to
444 establish workable glide paths that do not put reliability at
445 risk, to addressing concerns regarding stranded assets, to
446 facilitating workable, regional approaches that are not too
447 formal or too complicated to implement easily, and to
448 crafting what many are calling a reliability safety valve as
449 a backstop in case a reliability issue does arise.

450 EPA has taken unprecedented steps to reach out to and
451 engage with all of the states and our stakeholders. One of
452 the key inputs EPA heard before proposal and during the
453 comment period is the need to design the rule in a way that
454 respects both the urgency of dealing with climate change, and
455 the time it takes to plan and invest in the electricity
456 sector in ways that ensure both reliability and affordability

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457 going forward. We have paid close attention to those
458 comments, and will finalize a rule that takes them all into
459 account.

460 I look forward to your questions, Mr. Chairman. Thank
461 you very much.

462 [The prepared statement of Ms. McCabe follows:]

463 ***** INSERT 1 *****

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|
464 Mr. {Whitfield.} Well, thank you very much, and we
465 appreciate that statement.

466 And at this time, I would like to recognize myself for 5
467 minutes of questions.

468 Ms. McCabe, I think even you would agree that this is a
469 bold move on the EPA's part, but we all understand 111(d) and
470 the controversy surrounding it in that such a ubiquitous
471 substance as CO₂, you all never tried to regulate anything
472 like that under 111(d) before. And I will tell you, as I
473 said in my statement, half of state regulators have been in
474 touch with us and they are very much concerned. And you know
475 the lawsuits have filed, so I think you would acknowledge
476 that this is a very bold move on EPA's part. And one of the
477 things that I am concerned about, and I would like to make
478 very clear, I am certainly not an expert in the Clean Air Act
479 but I have read more than I want to, to be truthful about it,
480 but there is a definition in the Clean Air Act about the
481 source, and I don't think that a state has ever been
482 considered a source before. And every time I hear Ms.
483 McCarthy or anyone from the EPA or from the Administration

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484 talk about this rule, they go to great lengths talking about
485 all the flexibility they are giving to the states, but they--
486 but the states have no flexibility in determining what the
487 cap will be on the CO2 emission. Isn't that correct? Do
488 they have any option on what the cap will be?

489 Ms. {McCabe.} EPA will set the target.

490 Mr. {Whitfield.} Yeah, EPA sets the target.

491 Ms. {McCabe.} Um-hum.

492 Mr. {Whitfield.} And how did EPA set the target for
493 each state?

494 Ms. {McCabe.} We looked at a wealth of data about power
495 generation across the country, looking at the kinds of
496 technologies that are already in use to--

497 Mr. {Whitfield.} And how did you decide what the number
498 would be for each state?

499 Ms. {McCabe.} We looked at four particular types of
500 approaches that are widely in use across the country, and we
501 applied those in a uniform manner to each state's power
502 inventory.

503 Mr. {Whitfield.} And did you assume that every coal
504 plant, for example, would be able to become more efficient?

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505 Ms. {McCabe.} We used information from across the
506 country to apply an average expectation about efficiency
507 improvement.

508 Mr. {Whitfield.} And what is that average expectation?

509 Ms. {McCabe.} In the proposal, we assumed a 6 percent
510 efficiency--

511 Mr. {Whitfield.} And you know what, we are hearing from
512 everyone that, many of these coal plants, there is no way
513 they can get a 6 percent more efficient rating. So--and
514 people are questioning that--this assumption, how you came up
515 with this 6 percent assumption. But let me just ask you,
516 this legislation has been characterized as unreasonable.
517 When you consider the unique and radical approach that is
518 being utilized with this rule, why would anyone object when
519 we already know many lawsuits have already been filed, once
520 that rule becomes final, there are going to be more lawsuits
521 filed, why would anyone, when it has already been said that
522 this is not going to significantly affect the climate anyway,
523 why would anyone object to giving states an opportunity to do
524 their state implementation plan after the judicial remedies
525 have been exhausted?

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526 Ms. {McCabe.} Well, I have a couple of responses to
527 that, Mr. Chairman, and I--you won't be surprised to hear
528 that I don't exactly agree with some of the words that you
529 have used to characterize the plan. It is not radical. It
530 follows the process laid out at--

531 Mr. {Whitfield.} Has 111(d) ever been used in this way
532 before?

533 Ms. {McCabe.} 111(d) has been used to establish
534 expectations that states--

535 Mr. {Whitfield.} But you have only utilized it four or
536 five times in the history of the Clean Air Act. It has
537 always been very focused, small type of arrangements. But
538 anyway, why would you object to giving states an opportunity
539 to exhaust legal remedies before they have to give a state
540 implementation plan?

541 Ms. {McCabe.} Well, there is a system in place for
542 legal concerns, if there are any, about a rule that EPA
543 adopts under the Clean Air Act to test out those legal
544 concerns, and that is the--

545 Mr. {Whitfield.} Well, okay, but why would you object?
546 I mean why do you object to giving states this additional

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547 time?

548 Ms. {McCabe.} The draft--discussion draft basically
549 allows an unlimited time, this could lead to an unlimited
550 delay in the amount of time that would go by before steps
551 would be taken to implement--

552 Mr. {Whitfield.} But we--you know, we have been told
553 that normally--that it is not unusual for states to be given
554 3 years for implementation plans, but in this instance, they
555 are getting like 13 months or even less.

556 Ms. {McCabe.} No, that is not correct, Mr. Chairman.
557 The implementation period for this rule goes out to 2013.

558 Mr. {Whitfield.} I am not talking about implementation,
559 I am talking about the plan, submitting the plan.

560 Ms. {McCabe.} Well, that is right. The--

561 Mr. {Whitfield.} And that is a major chore.

562 My time has expired. At this time, I am going to
563 recognize the gentleman from Illinois, Mr. Rush.

564 Mr. {Rush.} I want to thank you, Mr. Chairman, again.
565 And, Madam Administrator, one of the foremost beneficiaries
566 of the CPC is low income communities, and I have a special
567 and particular interest in the low income communities. And

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568 are you aware of the NRDC report that just came out?

569 Ms. {McCabe.} Yes, I am.

570 Mr. {Rush.} That report stated that low income
571 Americans, again, would benefit most from receiving payment.
572 Do you have any commentary on that, and what are your
573 thoughts about that?

574 Ms. {McCabe.} Well, the--we know that the impacts of
575 climate change that we are already experiencing in the
576 country, and that we can expect to experience more, can have
577 an especially impactful effect on low income communities who
578 are already at a disadvantage when it comes to the impacts of
579 pollution. We expect and we are seeing that climate change
580 will lead to more heat waves, more air pollution, which will
581 exacerbate asthma, low income communities often have higher
582 rates of asthma, disruption such as from the increased
583 intensity of intense storm events that can have an adverse
584 impact on low income communities that are not in a position
585 to recover as easily as others with more means. So we
586 definitely see that low income communities are more at risk
587 of the adverse impacts that we see on public health, welfare
588 and economic wellbeing, and will benefit significantly from

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589 steps that we can take here.

590 Mr. {Rush.} And do you agree that states have a
591 responsibility to promote the general health and welfare or
592 low income communities and low income individuals, that there
593 is a way for the states to both invest in clean--in cleaner,
594 more efficient community provisions, such as the CPP, and
595 also provide help to those most vulnerable communities
596 through energy--and direct bill assistance?

597 Ms. {McCabe.} Well, the Clean Power Plan, and our
598 proposal, would allow states all the latitude they need to
599 design a plan that meets the needs of all the communities in
600 their state, and provide protections to low income
601 communities to make sure that the benefits of the program are
602 realized for all citizens across the state.

603 Mr. {Rush.} Madam Assistant Secretary, if this bill
604 passes and becomes--well, the bill under consideration, what
605 will be the result in your estimation, what will be the
606 outcomes, what kind of impact would this bill have on the
607 EPA's stated role that--of protecting our environment? What
608 will be the--

609 Ms. {McCabe.} Well, it would clearly delay the

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610 reductions that are to be achieved through this program, and
611 that so many people see as necessary. In fact, many, many
612 Americans see as necessary and are asking EPA to take action.
613 It would create additional uncertainty, and one of the things
614 that we always hear from the power sector is that certainty
615 is one of the most important things for them to be able to
616 plan for what--how they are going to manage their resources
617 in the future, knowing that carbon reduction is on the way.
618 And so they want to know and get on with it. And the bill
619 also would create an opportunity, as you have identified, for
620 governors to basically opt out of the program, which is
621 completely inconsistent with the way Congress set up the
622 Clean Air Act, which is that the Federal Government sets the
623 expectations for what a clean and healthy environment should
624 be across the country, and then states use their
625 flexibilities to achieve those goals in the way that works
626 best for them.

627 Mr. {Rush.} And would you agree that if this bill
628 passes, then the Congress would be playing a sort of
629 environmental Russian roulette in the health and welfare of
630 our nation and its citizens, particularly as it relates to

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631 the environment?

632 Ms. {McCabe.} Well, it would be a concern for there to
633 be a delay in a reasonable and commonsense program to make
634 these reductions.

635 Mr. {Rush.} Right. One state might get it right, one
636 state might get it wrong, the next state might get it in
637 between, so we are playing some kind of a hide-and-seek game
638 with our citizens and the environment. Would you agree with
639 that?

640 Ms. {McCabe.} I think you have raised real concerns.

641 Mr. {Rush.} Thank you. Mr. Chairman, I yield back.

642 Mr. {Whitfield.} Gentleman yields back.

643 At this time recognize the gentleman from Texas, Mr.
644 Olson, for 5 minutes.

645 Mr. {Olson.} I thank the chair. And good morning,
646 Administrator McCabe.

647 Ms. {McCabe.} Good morning.

648 Mr. {Olson.} I would like to start by reading a couple
649 of quotes from the Public Utility Commission back home. It
650 is called the PUC, and they have one of the largest states in
651 America. Texas has almost 10 percent of this country's

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652 population, and we have an enormous proportion of America's
653 energy production in its busiest port in Houston. And these
654 quotes aren't from a coal lobbyist. They are from a
655 commission that helps keep the lights on and keeps rates
656 fair. I quote, ``Rule 111(d) will create significant
657 electrical liability problems in Texas.'' Another quote,
658 ``The carbon emission limits for Texas will result in
659 significantly increased costs for Texas electricity
660 consumers.'' The final quote, it will cost--another quote,
661 ``Increase in energy costs for consumers, up to 20 percent in
662 2020.'' That does include new transmission lines, new power
663 plants. The cost will hit--this is their quote, ``\$10 to \$15
664 billion in noncompliance costs by 2030.'' I know you think
665 this rule has plenty of flexibility. Others disagree.

666 Recently, FERC Commissioner Muller has said that the
667 rule will mean havoc on the grid if there isn't a reliability
668 safety valve. The operators want an automatic way to react
669 if reliability is threatened, too. My question is can you
670 commit right here to put a relief mechanism to protect
671 reliability or even affordability in the final rule? If no,
672 why not? What is the harm?

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673 Ms. {McCabe.} Well, you have raised concerns that, as I
674 mentioned in my testimony, we have as well, and we always do.
675 We have received many, many comments from across the country,
676 including your state of Texas, raising these issues with a
677 lot of good ideas. And as Administrator McCarthy and I have
678 said on many occasions, we do expect to make some changes in
679 the rule that will address a lot of these concerns, including
680 considering a variety of ideas that people have suggested to
681 us for things like a reliability safety valve. So I think
682 when the final rule comes out, you will see that we have been
683 very responsive to these concerns.

684 Mr. {Olson.} But a safety valve, yes or no? Yes or no?

685 Ms. {McCabe.} I--you know, the Administrator signs the
686 final rule so I can't commit her here, but I will tell you
687 that these are the kinds of things that we are looking at
688 very, very, very closely.

689 Mr. {Olson.} So looks like a sort of sideways, not yes
690 or no.

691 Next question is about small power systems. There are
692 dozens of power systems, cross utilities across the state of
693 Texas run by municipal cities. We have them all across

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694 America actually. These communities have come together to
695 build one or two efficient little power plants to keep the
696 lights on. For example, back home in Texas, the Texas
697 Municipal Power Authority has one small coal-fired plant that
698 supplies power for four cities, Denton, Bryant, Garland, and
699 Greenville, northcentral Texas. They don't have back-up gas
700 plants to take up the slack, or inefficiencies to fix. They
701 told the EPA recently that their best bet to comply might be
702 just to shut power plants down, just close it down. They
703 rely on this power for affordable power. The impact to the
704 economy will be severe. There are straight investments made
705 to power directly to these towns. Won't your rule have an
706 impact on small, self-reliant communities like Denton,
707 Bryant, Garland, Greenville, all across America? Will it
708 hurt these communities, ma'am?

709 Ms. {McCabe.} Congressman, we have spent a lot of time
710 with the small municipal providers and rural electrics, and
711 we have heard their concerns. I think comments like that
712 though don't take into account the flexibility that the
713 states will have to design plans that address concerns like
714 that. There is nothing in the rule that requires any single

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715 plant to do any particular thing, and there are lots of
716 opportunities for the State of Texas and every state across
717 the country to design a plan that makes sure that they are
718 paying attention to the particular needs of the particular
719 types of power providers in their state.

720 Mr. {Olson.} But if they review the rules and they say
721 the best bet maybe just to close down. I mean that is a real
722 problem, ma'am. Have you considered they will just close
723 down because of these new rules? It is part of the equation
724 going forward. What are you going to do to fix this problem?

725 Ms. {McCabe.} The decision to close a plant is made on
726 the basis of a lot of considerations that go way beyond
727 environmental regulation, but what I am saying is that the
728 plan does not put any state in the position of having to make
729 that particular choice on behalf of a particular company.
730 There are options that they can build into their plan to
731 avoid those situations if that is in the best interest of
732 those companies and the customers that they serve.

733 Mr. {Olson.} Well, the folks back home disagree.

734 I yield back the balance of my time.

735 Mr. {Whitfield.} At this time I will recognize the

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736 gentlelady from California, Mrs. Capps, for 5 minutes.

737 Mrs. {Capps.} Thank you, Mr. Chairman, for holding this
738 hearing, and I thank Ms. McCabe for your testimony.

739 And as we know, the science is clear that increased
740 concentrations of carbon dioxide and other greenhouse gases
741 are causing our planet's climate to change. Climate change
742 affects our daily lives by increasing health risks, making
743 our oceans more acidic, threatening food and water supplies,
744 exacerbating drought, among many other impacts, and these
745 impacts are predicted to only intensify in the future,
746 negatively impacting our children and grandchildren. And
747 that is why we all have a responsibility to act now to reduce
748 the carbon emissions and other greenhouse gases that are
749 driving climate change.

750 As you know, power generation was responsible for nearly
751 40 percent of the carbon dioxide emitted last year in the
752 United States. Of this, 76 percent was from the coal-powered
753 sector. The simple truth is that we cannot address climate
754 change without reducing these emissions. That is what EPA is
755 doing with the Clean Power Plan. The plan is strong yet
756 flexible, allowing each state to determine the best ways to

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757 achieve its carbon dioxide targets. And EPA is in the
758 process of reviewing public comments to ensure that the Clean
759 Power Plan will meet its goal, minimize cost and reliability
760 concerns, and maximize benefits to human health and the
761 environment.

762 Ms. McCabe, can you elaborate on the flexibility that
763 states have, and just tell us what that--some examples or
764 what that means the states have in meeting the carbon
765 reduction targets, and the process EPA has used to develop
766 this kind of plan.

767 Ms. {McCabe.} I would be happy to, Congresswoman. So
768 there are a number of ways we built flexibility into the
769 plan. First of all, as I have said already, there is no
770 prescribed approach or control technology that states or
771 companies have to use that we identified for, but there are
772 many other ways that companies can go about reducing carbon
773 including really positive community building things like
774 investigate renewable energy and energy efficiency.

775 Another flexibility in the plan is the length of the
776 time to implement it. So all the way until 2030, states and
777 utilities would have to plan. So that builds in a lot of

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778 flexibility right there. Now, this is also not a rule--some
779 environmental rules have an hourly emission rate that
780 companies are required to meet. This will not have that. It
781 will have an annual type of approach averaged over the year,
782 which means that if utilities need to have variation in their
783 emission rates over the course of the year, they will be able
784 to do that and still meet this because, for carbon, that
785 makes sense.

786 Another flexibility we built into the rule was allowing
787 states to join together with other states in regional plants,
788 which even opens up the flexibility even more. And we have
789 had a lot of interest from states in that, especially in--and
790 are looking at more informal and less complicated ways that
791 they could join up with one another or with other states.

792 Mrs. {Capps.} Thank you. You know, we have entrusted
793 EPA and this process with promoting and protecting clean air
794 for over 40 years. They have consistently performed well.
795 Since 1970, EPA has cut many dangerous air pollutants by 90
796 percent or more. I think we lose sight of that amazing fact.
797 And our economy, at the same time, has tripled in size. So
798 here is another question. Do you think EPA would have had

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799 this much success protecting clean air and public health if
800 states had been allowed to opt out of EPA regulations that
801 they didn't like over this long history?

802 Ms. {McCabe.} It has been absolutely essential that the
803 way Congress set up the Clean Air Act has worked for EPA to
804 set those national targets, and then every state to step up
805 and do their part. And as you recognized, air pollution
806 doesn't respect state boundaries.

807 Mrs. {Capps.} Absolutely. Just one--see if we can get
808 this question in. As you know, the discussion draft before
809 us would not only allow states to simply opt out of the Clean
810 Power Plan if they don't want to participate, it would also
811 delay implementation of the plan indefinitely until every
812 lawsuit has been litigated. Ms. McCabe, is climate change an
813 urgent problem or one that can wait indefinitely to be
814 addressed?

815 Ms. {McCabe.} Climate change, as is being emphasized by
816 scientists almost every day now, is something that we must
817 pay attention to and begin our work on now.

818 Mrs. {Capps.} Thank you, and I have one question. I
819 will just put it out if you have time to address it. Ms.

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820 McCabe, what are some of the benefits that would likely be
821 denied to our constituents if this bill became law?

822 Ms. {McCabe.} Well, this is part of a large effort, a
823 global effort, to address climate. This is a very
824 significant part of that. If we don't pay attention to the
825 increasing levels of carbon, we will see increasing weather
826 events, air pollution, droughts, and all of the health and
827 welfare impacts that come along with those sorts of events.

828 Mrs. {Capps.} Thank you very much.

829 Mr. {Whitfield.} At this time, I will recognize the
830 gentleman from West Virginia, Mr. McKinley, for 5 minutes.

831 Mr. {McKinley.} Thank you, Mr. Chairman. And thank
832 you, Ms. McCabe, for appearing here. I have got three
833 questions if I can get to them kind of quickly with this.
834 Representatives of FERC in 2014 made a statement and I was
835 just calling up on my computer, my little phone here, to find
836 out what that statement was again. They said--because your
837 response earlier was you seemed to discount the reliability
838 by this, is what I heard, was the grid is going to be bombed
839 under this rule. But what he--but they went on to say--FERC
840 said that they worried that the electric grid doesn't have

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841 the infrastructure to replace the retiring coal and nuclear
842 plants, saying some U.S. regions would be subject to rolling
843 black-outs due to this deficiency by the year 2017. Do you
844 agree with what FERC is concerned about?

845 Ms. {McCabe.} I think we are all--we all want to make
846 sure that--

847 Mr. {McKinley.} That is a yes or a no. I have three I
848 am trying to get to.

849 Ms. {McCabe.} No, I do not agree with that.

850 Mr. {McKinley.} You don't agree with that statement?
851 Okay, thank you.

852 The second is that Mr. Pallone said that, and I
853 appreciate his remark, but he used a term, he said there are
854 bad states out there. Maybe West Virginia would be
855 considered a bad state in his eyes because 98 percent of the
856 power that we generate--that we consume in West Virginia
857 comes from coal. So I am curious on this concept that you
858 are coming up with. What is the cap going to be in West
859 Virginia, and what is the alternative that we have? If we
860 burn coal, what are we supposed to do?

861 Ms. {McCabe.} Yeah, so the proposal was designed to

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862 accommodate states that burn a lot of coal, and states that
863 don't. I come from Indiana. It is also a state that burns
864 predominantly coal, and when--

865 Ms. {McKinley.} Well, it says here you were to change
866 the heat rate. One of your blocks says change the heat rate,
867 but yet there is none--there is no increased funding under
868 the--or other groups to be able to do that research to be
869 able to accomplish it, so I am really concerned it is a
870 dream, an ideological dream, because I don't see how they are
871 going to cut back, but please, if you could, what is the cap,
872 what is the change in West Virginia, do you have a proposed
873 idea what you want to do in the CO2?

874 Ms. {McCabe.} I can't tell you now what change--

875 Mr. {McKinley.} Could you get back to me on that?

876 Ms. {McCabe.} Well, in the final rule, we will reflect
877 all the changes that--

878 Mr. {McKinley.} The final--

879 Ms. {McCabe.} --we will make.

880 Mr. {McKinley.} Prior to the final rule, how are people
881 going to respond to that if they don't know what the effect
882 it could have on a state like West Virginia?

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883 Ms. {McCabe.} Well, states like West Virginia and
884 others have given us lots of input suggesting ways in which
885 we ought to adjust their target.

886 Mr. {McKinley.} Okay, so you don't have a plan. Let
887 me--let's go to the third question. And I was reading the
888 testimony of the next panel, and there are increases in
889 residential electric costs associated with this Act, and will
890 be assessed in the context of the long-term declining trend
891 of real income among American families. And Congressman Rush
892 from Illinois made a good point, and he is concerned about
893 low income families. And--but low income families and
894 households have lost 13 percent of their income between 2001
895 and 2013. Thirteen percent of low income families are going
896 to struggle with this as a result of this. So my concerns
897 are with the--and we are going to spend \$7-1/2 to \$8.8
898 billion perhaps in--to be in compliance. It is going to be
899 passed on to the ratepayers. What am I supposed to tell
900 Mildred Schmidt who lives next-door to you or lives next-door
901 to me, how is she going to deal with this issue?

902 Ms. {McCabe.} Well, given the reliance--the way the
903 industry is going in terms of employing energy efficiency, we

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904 lay out that our proposal will lead to lower energy bills by
905 2030. So energy bills will go down, and that information is-
906 -

907 Mr. {McKinley.} But--

908 Ms. {McCabe.} --available to--

909 Mr. {McKinley.} --I want to make sure I am hearing--you
910 said energy prices are going to go down?

911 Ms. {McCabe.} Energy bills will go down, Congressman.

912 Mr. {McKinley.} How in the world are they going to go
913 down if we are spending this--

914 Ms. {McCabe.} With energy efficiency, people will be
915 buying less electricity.

916 Mr. {McKinley.} And you are serious? You really--

917 Ms. {McCabe.} I--

918 Mr. {McKinley.} --believe this?

919 Ms. {McCabe.} I do. We are seeing it all across the
920 country. We are seeing it in places like New England that
921 have been very aggressive on energy efficiency. If we use
922 less energy, our bills can go down. And our carbon emissions
923 can go down.

924 Mr. {McKinley.} So you--so let me make sure I am clear.

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925 You are saying--your testimony here before us that by the
926 time this thing is fully implemented, that the rate pay
927 through the--consumers are going to be paying less
928 electricity with electric bills as a result of having this
929 draconian standard forced upon them.

930 Ms. {McCabe.} That is what our analysis shows across
931 the country.

932 Mr. {McKinley.} Do you believe it yourself that it--
933 people--Mildred Schmidt is going to be paying less for her
934 electric bill?

935 Ms. {McCabe.} I believe that if we get serious about
936 energy efficiency and managing the--our use of electricity,
937 that that can lead to lower energy costs.

938 Mr. {McKinley.} Unbelievable. It just seems
939 delusional. Thank you very much.

940 Mr. {Whitfield.} I may just make one comment. The
941 Energy Information Agency just released a report showing the
942 electricity rates for the country between 2014 and 2015 have
943 gone up for the entire country.

944 At this time, I would like to recognize the gentleman
945 from Texas, Mr. Green, for 5 minutes.

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946 Mr. {Green.} Thank you, Mr. Chairman, and ranking
947 member, for holding the hearing. The EPA's Clean Power Plan
948 has been subject to much debate. The Supreme Court has
949 consistently agreed the EPA has the authority to regulate
950 greenhouse gases, so the legal challenges facing the Clean
951 Power Plan are very interesting. I have been in Congress for
952 some time, and since I joined the House, worked extensively
953 on trying to pass commonsense environmental legislation, and
954 unfortunately, we haven't done that in the last few years.
955 We need to work together to address the issues of carbon
956 emissions, and that doesn't mean eliminating certain fuels,
957 and it certainly doesn't mean eliminating the EPA. We need
958 to represent our constituents to find that exception or
959 compromise. I want to thank the EPA because we just learned
960 that the partnership with the input you are getting from
961 Federal Energy Regulatory Commission on the reliability
962 issue. That is one of the concerns we have. Of course, if
963 there is a reliability issue it could also impact the prices
964 because some of our markets are competitive. So the EPA, at
965 least from what I saw, understands they don't understand
966 reliability but FERC does, and so we want to make sure

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967 whatever you do does not cause reliability issues in our
968 communities.

969 Recently, you and Administrator McCarthy indicated
970 willingness to address issues with the interim deadlines of
971 the CPP. I repeatedly supported efforts to implement rule
972 changes with timelines that allow industry time to adjust to
973 protect for reliability. It is important for the sake of our
974 economy, electricity reliability, and workforce that we give
975 ample time to implement the new rules. What types of
976 comments did EPA receive regarding the interim goals that led
977 the agency to make these statements?

978 Ms. {McCabe.} Yeah, that is an issue that we got a lot
979 of comment on, Congressman, and just to make sure everybody
980 knows, the ultimate compliance deadlines for the rule is
981 2030, but the proposal had an interim goal that would operate
982 between 2020 and 2029. And we heard from some states that
983 that posed a very substantial reduction on them early in the
984 process. Our intent was to make sure that progress was being
985 made in this run up to 2030, but in a way that could be
986 moderately metered-in, in a way, so that reasonable choices
987 could be made.

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988 So we have heard all the way from don't have any interim
989 targets, to other sorts of ideas about how to adjust those,
990 but primarily the issue has been don't have it so that any
991 one state has a significant initial reduction that they have
992 to make as quickly as 2020.

993 Mr. {Green.} Would interim relief provide states enough
994 time to draft state implementation plans and receive guidance
995 from EPA?

996 Ms. {McCabe.} Certainly. And we are already gearing up
997 to provide states with guidance and information on how to put
998 their plans together.

999 Mr. {Green.} Does EPA believe that concrete monitoring
1000 requirements and performance metrics would accomplish the
1001 same goals as the Clean Power Plan but allow the states to
1002 tailor a path to 2030?

1003 Ms. {McCabe.} Well, the plan would allow the states
1004 complete latitude to design plans that make sense for them.

1005 Mr. {Green.} The--obviously, the large-scale reduction
1006 is challenging, especially when addressing the last few
1007 percentage points. Does EPA's Clean Power Plan include
1008 graduation dates that--to accommodate the states' efforts to

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1009 reduce emissions? Do they get credit over a period of 10
1010 years to 2030?

1011 Ms. {McCabe.} Yeah, sure. I mean they work their way
1012 down to that final timeline. And I should note too that as
1013 has always been the case with state implementation plans on
1014 air quality, there are opportunities along the way to make
1015 adjustments if needed.

1016 Mr. {Green.} How does EPA think--what does EPA think
1017 about the reliability safety valve for states requiring
1018 compliance and flexibility to address reliability issues
1019 would have FERC sign off on the nature of the reliability
1020 problem. Do you think that would be workable?

1021 Ms. {McCabe.} We think there are a number of good ideas
1022 about how to manage something like a reliability safety
1023 valve. You know, we employed something like that in the
1024 Mercury and Air Toxics Rule that has turned out to not be
1025 needed by very many people at all, but it was good to have it
1026 there as a backstop. And we are in good discussions with
1027 FERC about the options there.

1028 Mr. {Green.} So we are not reinventing the wheel here.
1029 It has been used before and can be used again here?

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1030 Ms. {McCabe.} That kind of approach was used before,
1031 that is right.

1032 Mr. {Green.} Thank you, Mr. Chairman. I yield back.

1033 Mr. {Whitfield.} At this time recognize the gentleman
1034 from Pennsylvania, Mr. Pitts--no, Mr. Barton from Texas for 5
1035 minutes.

1036 Mr. {Barton.} I am willing to let Mr. Pitts go if he
1037 is--well, thank you, Mr. Chairman. Thank you, Mr. Pitts.
1038 Thank you, Ms. McCabe--Honorable McCabe, for being here.

1039 I have a few comments I want to make, then I have a--
1040 several questions.

1041 My first comment is that there is absolutely no health
1042 benefit to this proposal. EPA's primary responsibility is to
1043 protect the public health, and the Clean Air Act gives the
1044 EPA wide authority and wide latitude in order to do that. It
1045 is one of the few federal agencies that has the authority to
1046 set a rule without any real consequences being looked at in
1047 terms of a cost benefit if the Administrator thinks that it
1048 is in the public interest, to protect the public health but
1049 this particular rule has no health benefit at all. What it
1050 is is a politically correct social policy.

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1051 Now, that may be acceptable, it may not be, but this is
1052 not a health-based rule. It is not a rule based on a real
1053 economic science, nor is it required by any existing federal
1054 law. There is no federal mandate and statute right now that
1055 requires this rule to be set. Again, it is simply the Obama
1056 Administration deciding what is politically correct social
1057 policy, and they are hoisting it on the states to comply.

1058 I don't think it is going to actually be implemented, I
1059 think the courts are going to strike it down, but if it were
1060 to be implemented or attempted in a serious way to be
1061 implemented under the current timelines in the proposed rule,
1062 the only certainty would be that electricity rates would go,
1063 reliability would go down, and there would be routine
1064 blackouts in many parts of the country. Now, as you know,
1065 Madam Administrator, we had a blackout here in Washington,
1066 D.C., not too long ago, a temporary blackout. As you also
1067 know, we had a coal-fired power plant in Virginia that was in
1068 Virginia and was shut down not too many years ago. If that
1069 power plant had still been online, there wouldn't have been a
1070 blackout.

1071 Now, I don't travel much internationally, but I do

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1072 travel some, and there are parts of the world where it is a
1073 given that there is not 100 percent electricity reliability,
1074 and people plan for it. Fortunately, we don't have to do
1075 that here in the United States, but if this rule were to
1076 actually be implemented, that would become an occurrence that
1077 would not be unusual.

1078 Now, my first question to you is, what does the EPA
1079 consider to be a--an acceptable price for electricity for the
1080 average retail consumer per kilowatt hours?

1081 Ms. {McCabe.} I don't have an answer to that,
1082 Congressman. We work--

1083 Mr. {Barton.} You don't have an answer?

1084 Ms. {McCabe.} We work with the energy regulators. That
1085 has been a significant issue that is not within EPA's
1086 jurisdiction. What we do is we look at expected impacts on--

1087 Mr. {Barton.} Well, do you accept that if you shut down
1088 30 percent approximately of the coal-fired generation's
1089 capacity in the United States, that there is going to be an
1090 adverse price impact because of that?

1091 Ms. {McCabe.} Well, I don't believe that our proposal
1092 predicts anywhere near that kind of impact.

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1093 Mr. {Barton.} Okay, what does--

1094 Ms. {McCabe.} And I--

1095 Mr. {Barton.} In your--what do you say--the studies I
1096 have shown indicate that, but I am not as aware of all the
1097 studies. What is the official EPA impact, and what percent
1098 of the coal-fired power generation is going to be shut down
1099 if this is implemented as the EPA projects it to be?

1100 Ms. {McCabe.} Well, let me emphasize again that there
1101 are lots of reasons why power plant shut down.

1102 Mr. {Barton.} Well, why don't you just answer my
1103 question?

1104 Ms. {McCabe.} In the--

1105 Mr. {Barton.} EPA certainly has some projection about
1106 how many--what percentage the coal-fired capacity in the
1107 United States of electricity generation is going to be down.

1108 Ms. {McCabe.} In our--

1109 Mr. {Barton.} I am told it is 20 to 30 percent.

1110 Ms. {McCabe.} In our regulatory impact analysis, if I
1111 remember correctly, and I will confirm this for you, I
1112 believe that we projected that about 10 percent--

1113 Mr. {Barton.} Ten percent.

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1114 Ms. {McCabe.} --of coal plants would become
1115 uneconomical. Keeping in mind--

1116 Mr. {Barton.} Did you--

1117 Ms. {McCabe.} --that--

1118 Mr. {Barton.} Did you provide that to the committee,
1119 because that is about half of the most benign economic study
1120 that I have seen. I am not saying you are wrong, I am just
1121 saying it seems to be overly benign.

1122 Ms. {McCabe.} We will confirm that for you, but that is
1123 a reflection of the flexibility and the time that is allowed
1124 in this plan, and the fact that the average age of the coal-
1125 fired fleet in this country is--

1126 Mr. {Barton.} Well, my time has already expired. Let
1127 me ask one--do you think it is fair that one state, i.e., my
1128 state, the state of Texas, by itself has to have 20 percent
1129 of reductions for the whole country?

1130 Ms. {McCabe.} The state of Texas has significant carbon
1131 emissions because of its size and the amount of power that is
1132 produced there.

1133 Mr. {Barton.} So--

1134 Ms. {McCabe.} This will--

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1135 Mr. {Barton.} The Obama Administration is just telling
1136 Texas to go jump in the lake, we don't care about your
1137 economy.

1138 Mr. {Whitfield.} Gentleman's time has expired.

1139 Ms. {McCabe.} Not at all.

1140 Mr. {Whitfield.} At this time I would like to recognize
1141 the gentleman from Pennsylvania, Mr. Doyle, for 5 minutes.

1142 Mr. {Doyle.} Thank you, Mr. Chairman. And welcome.
1143 Administrator McCabe, a lot of people are speculating about
1144 the impact the rule is going to have on reliability in the
1145 grid, and we know it is a very elaborate, complicated
1146 machine. I am not sure there is any way to actually know the
1147 impact until states all submit and implement their respective
1148 plans, and because the grid is so interconnected and you
1149 expect 50 different state plans. Can you talk about the
1150 Administration's plan to ensure that all of these plans work
1151 together in a way that protects the reliability of the grid,
1152 because we know energy production and consumption isn't
1153 always limited by state lines?

1154 Ms. {McCabe.} Yeah. So there are a couple of good
1155 points that you raise. One is that we don't know what the

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1156 state plans will look like, and so a lot of the predictions
1157 about things that will or won't happen are based on people
1158 not knowing what choices states will make. The other is
1159 that, as you pointed out, it is an interconnected system. In
1160 fact, many power companies themselves operate in multiple
1161 states. And what we are seeing, which is very positive, is
1162 lots of conversations happening both between the energy
1163 regulators and the environmental regulators, and also between
1164 the power companies and the state governments across state
1165 lines in regions, talking about ways that they can work
1166 together. How the--how states can set up their plans so that
1167 they can interconnect with each other in ways that make that
1168 sort of either averaging or working together across
1169 companies, across states, very easy to do. And all of those
1170 things will help make sure that power is where it needs to
1171 be, when it needs to be, over this long trajectory of
1172 implementation.

1173 Mr. {Doyle.} Let me ask you about how this proposed
1174 rule treats nuclear power, specifically, existing plants
1175 which we have in Pennsylvania. It is, as you know, our only
1176 source of reliable base-load electricity that is carbon-free,

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1177 but my understanding is the proposed rule gives states little
1178 credit for preserving plants in the nuclear fleet,
1179 approximately a 6 percent credit. Is EPA reconsidering how
1180 it treats existing nuclear power plants in its rule? It
1181 seems to me that any nuclear power plant whose operator makes
1182 the significant investment to pursue relicensing during the
1183 compliance period, that should be treated as new capacity.
1184 And I say that because there is no guarantee that the NRC
1185 would grant such a license, and it is far from assured that
1186 plant operators will make the commitment and spend the money
1187 to pursue relicensing when many of these plants are already
1188 financially challenged. So it just seems to me if we start
1189 to lose a large chunk of our nuclear fleet, I don't see how
1190 we are going to meet our greenhouse gas goals.

1191 Ms. {McCabe.} Yeah.

1192 Mr. {Doyle.} So how are you going to treat the
1193 existing--

1194 Ms. {McCabe.} That is a very good point, and we did
1195 receive a lot of input on how we proposed to handle nuclear
1196 plants, so we are thinking very hard about that. Our intent
1197 certainly is not to put any barriers in the way of continued

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1198 use of nuclear power seeking relicensing, upgrading, if that
1199 is appropriate, plants that are under construction going
1200 forward. We also recognize some of the challenges that that
1201 industry is facing today, and we don't want the Clean Power
1202 Plan to interfere with the use of that power. So we are
1203 looking at all of that, Congressman, and we will be
1204 addressing--

1205 Mr. {Doyle.} And are you considering looking at
1206 relicensing as--

1207 Ms. {McCabe.} We are looking hard at that issue and
1208 considering what our options are there.

1209 Mr. {Doyle.} I see. Also I want to talk a little bit
1210 about the concerns people have of the impact on base-load
1211 power plants. You know, we can argue over the merits of this
1212 type of power, but for the time being and the foreseeable
1213 future, these are the plants that are providing the bulk
1214 power that we rely on. Are you concerned about the impact
1215 that closures on the grid, its operation, its ability to
1216 perform in severe circumstances, has the EPA conducted any
1217 low-flow analysis to determine the impact on power flows and
1218 grid stability--

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1219 Ms. {McCabe.} Well--

1220 Mr. {Doyle.} --both on this rule?

1221 Ms. {McCabe.} As part of our proposal, we took a look
1222 forward and it is not a reliability analysis in that normal
1223 sense of the word, but we took a look into the future and we
1224 are comfortable that what we were putting forward was a
1225 reasonable approach to--in order to preserve reliability.
1226 Coal would remain about 30 percent of the nation's power
1227 supply in 2030, so many of those base-load plants would
1228 become efficient and would continue to operate. There are
1229 lots of other organizations that are looking at these issues.
1230 The Federal Energy Regulatory Commission just held a series
1231 of 4 hearings that we attended and were very involved in. So
1232 we--this is not EPA's area of expertise, so we know that we
1233 need to be communicating and working with the agencies whose
1234 expertise it is to make sure that we are doing this right.

1235 Mr. {Doyle.} Thank you.

1236 Mr. Chairman, thank you.

1237 Mr. {Whitfield.} Thank you.

1238 At this time recognize the gentleman from Pennsylvania,
1239 Mr. Pitts, for 5 minutes. Gentleman from Ohio, Mr. Latta,

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1240 for 5 minutes.

1241 Mr. {Latta.} Well, thank you, Mr. Chairman. And, Madam
1242 Administrator, thanks very much for being with today.

1243 In the proposed Clean Power Plan, EPA estimates costs of
1244 between \$5.5 billion and \$8.8 billion every year for each of
1245 the years from 2020 through 2030. Are these costs over and
1246 above the costs associated with EPA's Mercury and Air Toxics
1247 Rule, which EPA estimates will cost about \$9.6 billion
1248 annually in the coming years?

1249 Ms. {McCabe.} Those are costs associated with this
1250 program.

1251 Mr. {Latta.} Let me ask, now, how did you come up with
1252 those estimates?

1253 Ms. {McCabe.} We used a--standard approaches and guided
1254 by guidance from the Office of Management and Budget, working
1255 with our economists in EPA to make determinations about the
1256 expected costs and the benefits.

1257 Mr. {Latta.} Okay. And, you know, just to follow up
1258 where Mr. Barton was with his questioning. Has the EPA done
1259 an analysis of the accumulated effect on the electricity
1260 rates of all its recent major air rules affecting power

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1261 plants?

1262 Ms. {McCabe.} No. No, we haven't.

1263 Mr. {Latta.} You have not?

1264 Ms. {McCabe.} I don't believe we have.

1265 Mr. {Latta.} Okay. Given the billions of dollars and

1266 new costs from these rules that have not yet been reflected

1267 in the rates, shouldn't the EPA be producing a clear

1268 cumulative assessment for the public to review? And just to,

1269 you know, I know the folks in this committee have heard me

1270 say it before, but I represent a district of about 60,000

1271 manufacturing jobs, and a lot of my jobs out there are in

1272 plants that use--that are really high users of electricity

1273 that keep these people working every day, but is there a

1274 clear cumulative assessment for the public to review out

1275 there from the EPA?

1276 Ms. {McCabe.} Well, it is--there are many things that--

1277 of course, as you know, that go into the cost of electricity,

1278 and so EPA, as we are required to do, for each program we

1279 look at the costs associated with that program, and each

1280 program before it has looked at the costs associated with

1281 that program.

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1282 Mr. {Latta.} And, you know, on the next panel you might
1283 have already seen who is going to be testifying before us,
1284 but the next panel we have some very powerful testimony about
1285 the impact the higher rates on families with middle or lower
1286 incomes, and what assurances can we give these ratepayers in
1287 31 states reviewed that they don't need to be concerned about
1288 higher electricity rates?

1289 Ms. {McCabe.} Well, I think as we have discussed
1290 already here this morning, there are a number of elements
1291 that go into this proposal and will go into the final rule
1292 that will give states flexibility to make sure that they are
1293 implementing this in a way that can protect especially lower
1294 income ratepayers, which is something that states are very
1295 conscious of, and have tools at their disposal to do.

1296 Mr. {Latta.} Great, I was just talking a bit about what
1297 happened in my state, in Ohio, under the EPA--under Ohio
1298 EPA's comments on the proposed Clean Power Plan. It
1299 indicated that compliance with building block 2, and building
1300 block 2 was the use low emitting power sources, using lower
1301 emitting power plants more frequently to meet demands means
1302 less carbon pollution is what it says here in building block

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1303 2. Under the Ohio EPA's testimony, they are looking at the
1304 cost to Ohioans of approximately \$2.5 billion more for
1305 electricity rates in 2025 alone. And similarly, the
1306 chairperson of the Wisconsin Public Service Commission
1307 recently testified that the proposed Clean Power Plan would
1308 cost Wisconsin ratepayers between \$3.1 billion and \$13.4
1309 billion, and this is only a production cost increase. It
1310 does not include necessary upgrades to the gas and electric
1311 transmission infrastructure that is also going to add up to
1312 the cost for compliance. Are these types of costs to
1313 implement the Clean Power Plan acceptable to the EPA's
1314 perspective?

1315 Ms. {McCabe.} Well, I--it is hard to assess costs for a
1316 plan that no state has developed yet and so I can't really
1317 speak to that, but I will point out that in the industry, we
1318 are seeing an increased use of gas and less use of coal
1319 because of fuel prices, gas-based generation is quite
1320 economical compared to coal, and so this is the way the
1321 industry is going. That is exactly how the Clean Air Act
1322 tells us to build our rule is to look at the direction that
1323 the industry is going and set targets based on that.

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1324 Mr. {Latta.} Well, and, you know, like in the State of
1325 Ohio we have a lot of plants that are either going to have to
1326 be shutting down or converting. The number is over 40, but
1327 we have to also consider in that number and that cost that
1328 they are either going to have to convert those plants or
1329 build brand new plants. And so just because the cost of a
1330 certain energy out there might be lower today, we still have
1331 to have the infrastructure and the plant to be able to
1332 produce that power. And so I think those are things that,
1333 you know, the EPA has to really look at when you are looking
1334 at these numbers.

1335 Mr. Chairman, I see my time has expired and I yield
1336 back.

1337 Mr. {Whitfield.} Gentleman yields back.

1338 At this time recognize gentleman from Kentucky, Mr.
1339 Yarmuth, for 5 minutes.

1340 Mr. {Yarmuth.} Thank you, Mr. Chairman. Administrator,
1341 thank you for being here today. You know, I haven't been on
1342 the committee for a long time, and already this conversation
1343 is sounding a lot like Groundhog Day, which is okay because I
1344 know my lines in this play. One of the things that astounds

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1345 me as we talk about environmental issues, and we do week
1346 after week in this subcommittee, is that we get a lot of
1347 alarmist talk and this has been the historical pattern for as
1348 long as the EPA has been in existence, and I recall the same
1349 kind of concerns with acid rain, the same kind of concerns
1350 with mercury, and the same kind of concerns when we passed
1351 Waxman-Markey, at least in the House, in 2009. So just as a-
1352 -an analysis that I make, when we were analyzing Waxman-
1353 Markey back in 2009, and we had made some significant changes
1354 in the way the original bill was introduced that made it
1355 easier for states like Kentucky, which gets 92 percent of its
1356 energy from coal, to comply without an adverse impact on our
1357 constituents, I started calling on major users of
1358 electricity, UPS, or the global hub of UPS, Ford Motor
1359 Company, General Electric, the Louisville Metro Government,
1360 University of Louisville, all of those users, and without
1361 exception they were either for the plan or neutral on the
1362 plan. So they had made an assessment that there was not
1363 going to be a significant impact on their utility costs. As
1364 this rule has now been circulating--this proposed rule has
1365 been circulating, I have waited for my constituents to chime

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1366 in, and the same reaction I have gotten, we haven't heard
1367 from anybody who is concerned about the long-term
1368 implications of this new rule. And I think the reason is
1369 that early on the EPA did allow flexibility--include
1370 flexibility among the states. Our governor and our energy
1371 department came up with a plan that they thought could help
1372 us comply with minimal impact on our consumer rates, and we
1373 have to reduce our emissions by 18 percent between now and
1374 2030 under the rule. That is a little more than 1 percent a
1375 year. So when you actually frame it that way, the idea that
1376 we couldn't come up with 1 percent reduction a year just by
1377 using conservation, changing installation patterns, classes,
1378 so forth, is kind of silly. And I suspect, and with all due
1379 deference to Texas, I don't know Texas' situation, it seems
1380 to me that that is a small price to pay to have a reduction--
1381 a significant reduction in carbon emissions. In my district,
1382 carbon emissions not only add to global climate change but
1383 also to respiratory problems. As always, it was a documented
1384 correlation between emission of carbon dioxide and those
1385 problems. We have a huge problem in the immediate proximity
1386 to power plants in my district in Louisville. So all of

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1387 these things, these doom and gloom scenarios, and I don't
1388 want to use the pun of the sky is falling, but the doom and
1389 gloom scenarios seem to me to not play out in reality.

1390 So one question I would ask you is that under the
1391 proposed terms of the legislation that we are discussing, do
1392 you see any scenario in which opting out of--refusing to do
1393 your own plan or opting out of a federal plan would result in
1394 a safe, low cost, and clean electricity system going forward?

1395 Ms. {McCabe.} I think it would be very disruptive to
1396 have a system where states could opt out of a federally
1397 required plan that other states are doing, and especially
1398 with an interconnected, interstate power system.

1399 Mr. {Yarmuth.} The chairman asked a little while ago,
1400 and the chairman is a good friend, why we were doing this,
1401 the proposed rule, when there are so many--being filed, my
1402 state has joined, and my--full disclosure, and I think we can
1403 probably say the same thing--ask the same question about this
1404 bill. Why would we do this when this bill passed and get
1405 vetoed, and it would never be overridden, but we are getting,
1406 again, to make the same arguments that we made week after
1407 week after week. So I want to thank you for your work.

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1408 Again, I think thanking you for providing the states the
1409 flexibility to tailor their plans, and if we go forward and
1410 this is the final action, Kentucky will have a very workable
1411 plan to meet the obligations of the Act, and with minimal
1412 impact on our consumers. So thank you for that.

1413 And I yield back.

1414 Mr. {Whitfield.} At this time recognize the gentleman
1415 from Kansas, Mr. Pompeo, for 5 minutes.

1416 Mr. {Pompeo.} Thank you, Mr. Chairman. And thank you
1417 for being here today Ms. McCabe.

1418 I saw a recent trade report that said there were roughly
1419 640-plus state implementation plans that were backlogged. Is
1420 that report correct or roughly correct?

1421 Ms. {McCabe.} That sounds about right. That refers to
1422 a number of different submissions that states would have
1423 made, some of them very minor.

1424 Mr. {Pompeo.} Could you provide us a list of all those
1425 650-plus backlog--

1426 Ms. {McCabe.} I don't think--

1427 Mr. {Pompeo.} --SIPs?

1428 Ms. {McCabe.} I don't think we have a list of them all

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1429 because these are handled by our regional offices.

1430 Mr. {Pompeo.} Could you not put them all together? I

1431 mean--

1432 Ms. {McCabe.} Well, I will take that back--

1433 Mr. {Pompeo.} That same--

1434 Ms. {McCabe.} I will take that back, Congressman.

1435 Mr. {Pompeo.} Wow, can't put together a list from the
1436 regions, that is something. Does that not indicate that when
1437 these states put together these plans, these are very short
1438 timelines for approvals, they didn't--implementation plans,
1439 that there is some risk that the Clean Power Plan might not
1440 be able to work, you just don't have the resources to do that
1441 and approve these plans in a timely fashion?

1442 Ms. {McCabe.} No, I expect that the agency would make
1443 sure that we--

1444 Mr. {Pompeo.} So you get to these and you put these
1445 other 655 in the back of the queue?

1446 Ms. {McCabe.} Well, Congressman, if I could take a
1447 minute and explain. The--

1448 Mr. {Pompeo.} You can take about 10 seconds.

1449 Ms. {McCabe.} We work with the states to prioritize the

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1450 plans that they submit to us that make the most different for
1451 public health and welfare in the states, and some are less
1452 critical, and so they--we don't get to them as quickly.

1453 Mr. {Pompeo.} You said a minute ago that you thought
1454 that the cost for consumers would be reduced, as a result, at
1455 the end of 2030 ratepayers would have a lower burden, is that
1456 correct?

1457 Ms. {McCabe.} That is what our regulatory impact
1458 analysis says.

1459 Mr. {Pompeo.} Why on earth are you worried about a
1460 state opting out if this is so great? You seem very
1461 concerned that a state might opt--I can't imagine some
1462 governor opting out when it is going to save his ratepayers
1463 money. I am interested in why you are concerned about that.

1464 Ms. {McCabe.} Well, I think we are hearing from a
1465 number of states that they don't agree with this program, and
1466 so it seems like there might well be states that would--

1467 Mr. {Pompeo.} Why do you think--

1468 Ms. {McCabe.} --opt--

1469 Mr. {Pompeo.} --you know more than they do--

1470 Ms. {McCabe.} Well--

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1471 Mr. {Pompeo.} --about what it is going to cost the
1472 ratepayers? I mean if this is such genius and such glory,
1473 and such an enormous cost savings, why aren't--you said the
1474 northeast was doing it already, right? Didn't you say the
1475 northeast was already doing efficiency gains?

1476 Ms. {McCabe.} Yes.

1477 Mr. {Pompeo.} Why do we need this rule? It is--this is
1478 beautiful, this is lower cost and lower CO2, this is magic.

1479 Ms. {McCabe.} Well, this is an urgent environmental
1480 public health and economic problem that we are faced with--

1481 Mr. {Pompeo.} And you assume the governors care about
1482 that too, right? These aren't bad--these governors aren't up
1483 to hurt the people in their state, correct?

1484 Ms. {McCabe.} The states are moving in different
1485 directions--

1486 Mr. {Pompeo.} No, answer my question. Yes or no, are
1487 governors trying to harm the health of their constituents?

1488 Ms. {McCabe.} I assume the governors are not trying to
1489 harm the--

1490 Mr. {Pompeo.} Right, and they would like to reduce the
1491 rates for their constituents too, is that right?

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1492 Ms. {McCabe.} I would--

1493 Mr. {Pompeo.} So why--tell me why this is--why your
1494 rule is needed if this is such an uninhibited good.

1495 Ms. {McCabe.} Under the Clean Air Act, we have an
1496 obligation to address air pollution that is harming the
1497 public wealth and--health and welfare. Carbon has been
1498 identified and confirmed now by the Supreme Court that it is
1499 doing that. We are moving forward with--

1500 Mr. {Pompeo.} Let's get to health. You talked about
1501 asthma. How many fewer asthma cases as a result of the Clean
1502 Power Plan?

1503 Ms. {McCabe.} We predicted there would be thousands of
1504 fewer exacerbated asthma--

1505 Mr. {Pompeo.} How many? Where is the report, where is
1506 the study that shows exactly how many fewer asthma--

1507 Ms. {McCabe.} Those predictions are laid out in our
1508 regulatory impact analysis.

1509 Mr. {Pompeo.} How much more increased snowpack as the
1510 result of the Clean Power Plan?

1511 Ms. {McCabe.} That is not something that we predicted,
1512 and that is not something that you could predict from--

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1513 Mr. {Pompeo.} These are your indicators. These are
1514 EPA's indicators of climate change. They are on your Web
1515 site. I am staring at it right now.

1516 Ms. {McCabe.} Yes.

1517 Mr. {Pompeo.} I assume there will be a benefit to the
1518 snowpack, so how much more snowpack as a result of the Clean
1519 Power Plan?

1520 Ms. {McCabe.} Climate change is affected by many things
1521 and needs to be looked at over a long--

1522 Mr. {Pompeo.} You can't--yes or no, will there be more
1523 snowpack as a result of this rule or less?

1524 Ms. {McCabe.} That is not something you can predict.

1525 Mr. {Pompeo.} So you don't know. The answer is you
1526 don't know.

1527 Ms. {McCabe.} That is not something that is predictable
1528 by--

1529 Mr. {Pompeo.} How many fewer heat-related deaths as a
1530 result of the Clean Power Plan?

1531 Ms. {McCabe.} The--I don't know. I will--

1532 Mr. {Pompeo.} You don't know? How much sea-level rise
1533 will be diminished as a result of the Clean Power Plan?

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1534 Ms. {McCabe.} This is one step, Congressman. It takes
1535 many, many steps.

1536 Mr. {Pompeo.} Right. The answer is you don't know,
1537 correct? You don't know the answer to the question. You
1538 don't know. These are your indicators, this is your science,
1539 this is your assertion, it is in deep disagreement with lots
1540 of other folks who have a different view of this, and yet you
1541 won't put forward the health-related benefits that are
1542 associated with this in a scientific way. Instead, you come
1543 before us today and make assertions unsupported by data,
1544 unsupported by science, and you list a series of indicators
1545 and you say, gosh, we are going to put this enormous cost--
1546 your own data says in the billions of dollars, but we don't
1547 know what health impact this will have on America. Mr.
1548 McKinley said earlier this is delusional. It is worse than
1549 that; it is unfounded in science. And for that reason alone,
1550 we need to move forward with this legislation.

1551 And, Mr. Chairman, I thank you for having this hearing
1552 today.

1553 Mr. {Whitfield.} At this time recognize the gentleman
1554 from New York, Mr. Engel, for 5 minutes.

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1555 Mr. {Engel.} Thank you. I would like to first give
1556 Administrator McCabe a chance to answer some of these
1557 questions because I don't understand why some governors have
1558 an ideological--they seem to do things that would pollute the
1559 air and not be very beneficial to their constituents. Would
1560 you care to elaborate any more because you didn't have very
1561 much chance to expand on your thoughts?

1562 Ms. {McCabe.} Well, people have different views, and
1563 states take different approaches to things. What I was
1564 trying to say, Congressman, and I appreciate you giving me
1565 the opportunity, is that Congress, in setting up the Clean
1566 Air Act, set up a system where the Federal Government would
1567 set expectations for protecting public health and welfare
1568 across the country, recognizing that states make different
1569 choices, but also recognizing that a child in Washington
1570 State and a child in Florida should have just as clean an
1571 environment, regardless of individual choices that their
1572 states might make.

1573 Mr. {Engel.} Yes, I couldn't agree with you more. And
1574 let me remind my colleagues that the Clean Air Act was
1575 enacted by an overwhelming bipartisan majority, was signed

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1576 into law by President Nixon, and it stands as one of the most
1577 successful public health laws in our nation's history.
1578 Today's discussion draft would definitely delay
1579 implementation of the Clean Power Plan, and allow governors
1580 to essentially opt out if they and they alone determine that
1581 their compliance would adversely impact ratepayers or
1582 electric reliability. It is a fact, is it not, that the
1583 United States emits more carbon pollution than any other
1584 nation except China, and existing power plants are the
1585 country's largest single source of carbon pollution? Is that
1586 a fact?

1587 Ms. {McCabe.} That is correct.

1588 Mr. {Engel.} So it is obvious that these emissions have
1589 significant health impacts that threaten the lives and
1590 wellbeing of people all over America. But since 1970, we
1591 have cut many dangerous air pollutants by 90 percent or more,
1592 and while our economy has tripled in size, and I believe that
1593 means millions of lives have been saved and illnesses
1594 avoided, and let me quote an EPA analysis which estimates
1595 that in the year 2010 alone, the Clean Air Act has prevented
1596 over 160,000 premature deaths, 130,000 cases of heart

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1597 disease, 1.7 million asthma attacks, 86,000 hospital
1598 admissions, and billions of respiratory illnesses. The
1599 monetary value saving Americans from those harms is projected
1600 to reach \$2 trillion in the year 2020 alone, and from 1990
1601 through 2020, the monetary value to Americans is projected to
1602 exceed the cost by a factor of more than 30 to 1.

1603 I am particularly interested in, Madam Administrator,
1604 because my district has some of the highest rates of asthma
1605 in the United States, rates of death of asthma in the Bronx
1606 where I am from are about three times higher than the
1607 national average, hospitalization rates are about five times
1608 higher, and it seems to me that today's discussion draft
1609 would endanger lives and jeopardize health are dramatically
1610 weakening and delaying Clean Air Act safeguards.

1611 So let me ask you, Madam Administrator, will you please
1612 talk about how air pollution impacts the health of our
1613 communities, and explain how this discussion draft would
1614 delay or prevent the air quality benefits of the Clean Power
1615 Plan?

1616 Ms. {McCabe.} Well, it is very clear that air pollution
1617 does affect the health of people in our communities, and

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1618 especially people who--low income and communities of color
1619 that already are suffering from a variety of pressures on
1620 their health and on their healthcare. Higher levels of
1621 particulates and nitrogen oxides and sulfur dioxide lead to
1622 asthma, as well as heart attacks, other sorts of respiratory
1623 illnesses, and in some cases premature death. And all of
1624 that information is very well established and very well laid
1625 out. So the Clean Air Act has been incredibly helpful to the
1626 public health of this country, saving much suffering, much
1627 cost to those families' lives and to the economy from the
1628 healthcare costs avoided.

1629 Mr. {Elmer.} Can you elaborate on the state
1630 flexibility, because there is flexibility, of the Clean Power
1631 Plan in terms of state implementation?

1632 Ms. {McCabe.} Yes. There is a long trajectory in time
1633 for states to design plans that work for them. There is no
1634 prescribed approach for any state to follow, so they can be
1635 very respectful of their particular power sources and the
1636 needs of their communities. There is the ability for states
1637 to cooperate with other states, either near or far, in small
1638 or large groups, to widen the pool of cost-effective

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1639 approaches. So this system which Congress set up to allow
1640 states to do these sorts of plans is very well designed to
1641 afford lots of flexibility.

1642 Mr. {Elmer.} Well, thank you. And thank you very much,
1643 and I am very pleased that you are raising these issues today
1644 because the health of our constituents depend on it. Thank
1645 you so much.

1646 Ms. {McCabe.} Thank you.

1647 Mr. {Whitfield.} At this time recognize the gentleman
1648 from Illinois, Mr. Kinzinger, for 5 minutes.

1649 Mr. {Kinzinger.} Thank you, Mr. Chairman.
1650 Administrator, thank you for being here with us. Appreciate
1651 your service and to be willing to come in front of the
1652 committee.

1653 In the proposed rule, your agency sets out--states
1654 specific goals for reducing carbon dioxide in the power
1655 generation section. More specifically, the rule says that
1656 once final goals have been promulgated, a state will no
1657 longer have an opportunity to request that the EPA adjust CO2
1658 goals. I just want to delve into that a little bit just so
1659 that I know. In the final rule, will the carbon dioxide

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1660 goals set for each state be fixed, or will they be fixed in
1661 number?

1662 Ms. {McCabe.} That is what we proposed, and so we are
1663 looking at the comments that we received on that,
1664 Congressman, but that is--so we are looking at that, but--

1665 Mr. {Kinzinger.} Okay.

1666 Ms. {McCabe.} The idea is that states should be able,
1667 once the rule is final, to go forward and develop and
1668 implement their plan.

1669 Mr. {Kinzinger.} So let me delve into that a little
1670 further. You know, I have seen a number of studies come out
1671 recently concerning the price, we have talked about that a
1672 lot, the price increase with these rules potentially. Will
1673 there be an opportunity for a state to request that the EPA
1674 adjust those goals if the state administrators find that
1675 those goals will cause electricity prices to substantially
1676 increase?

1677 Ms. {McCabe.} That is not what we propose. We believe
1678 that the plan allows enough flexibility that states should be
1679 able to implement these plans in a way that is reasonable--

1680 Mr. {Kinzinger.} Well--

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1681 Ms. {McCabe.} --and will protect--

1682 Mr. {Kinzinger.} What kind of flexibility--I mean if
1683 you have a number that is set and when the state basically
1684 comes back and says, hey, look, we have information that says
1685 this is going to skyrocket prices on our customers, what is
1686 the flexibility that we can adjust that besides actually
1687 adjusting that if that number stays fixed?

1688 Ms. {McCabe.} Well, if--I would say that if a state
1689 found some sort of extraordinary problem with the plan that
1690 it had developed, there is always the ability to come back
1691 and talk to EPA about making adjustments, but it is important
1692 that--

1693 Mr. {Kinzinger.} You just said it is fixed though, it
1694 is a fixed number.

1695 Ms. {McCabe.} But it is important that the goals be
1696 clear and it is important that the goals be fairly set across
1697 the country from--

1698 Mr. {Kinzinger.} Well, yeah, and I get the clear thing,
1699 and if this works out, I would imagine a state would want to
1700 stick with it if, as you say, this drives down prices and it
1701 is amazing, but if they find out that this isn't, you know,

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1702 quite what it is sold to be, I mean I would think that there
1703 would be an opportunity to address that beyond extraordinary
1704 measures, something that would be--doesn't even have to be
1705 extraordinary, just taking measures to adjust something that
1706 doesn't seem to be working out.

1707 Ms. {McCabe.} I think we need to remember that these
1708 plans will be implemented in the context of the changes that
1709 are happening in the energy system now. So--

1710 Mr. {Kinzinger.} So the same is for the assigned goals
1711 in terms of reliability should there be an opportunity if
1712 reliability, not just pricing, you know, pricing we can get,
1713 but reliability is the real national security issue, would
1714 there be an opportunity for states to make an adjustment if
1715 that situation became--

1716 Ms. {McCabe.} Right. So as I have said already this
1717 morning, we are looking at talking with organizations like
1718 FERC and others who are expert in these issues to make sure
1719 that our final rule will protect reliability.

1720 Mr. {Kinzinger.} Well, I would hope so, and I just want
1721 to add that, you know, look, pricing increases to me is very
1722 important and it is very detrimental, but I think even above

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1723 that is, you know, power reliability issues, and there ought
1724 to be a real off-ramp. And I would also add, you know, and I
1725 think I would probably get the same result from you, but when
1726 it comes to like issues of job loss, if it is proven that
1727 this could create job loss, there ought to be an opportunity
1728 for states to make adjustment. Would there be any other
1729 federal agency or state agency that would have a role in
1730 deciding whether to change the goal at this point if you were
1731 setting out goals for states, any agency besides yours that
1732 would have any input in that?

1733 Ms. {McCabe.} Well, it is really EPA's responsibility
1734 under the Clean Air Act to make those decisions.

1735 Mr. {Kinzinger.} Okay. And I just--I already talked
1736 about, you know, the issue of an off-ramp if you have
1737 reliability and you are going to want to put in a good word
1738 for that because I think that will be extremely important,
1739 and you have probably seen that in a lot of your comments.
1740 So, you know, with all the regulations coming down from EPA,
1741 and the discussion of this, are we locking states into
1742 economic hardship in regards to these mandates coming down
1743 from the Federal Government as a result of these duly

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1744 proposed rules?

1745 Ms. {McCabe.} I would say that we are not, Congressman.
1746 I know there is a lot of debate about those issues, but I
1747 would encourage people to think about the flexibility that is
1748 here, the opportunities that people are seeing, there is a
1749 lot of positive conversation going on around the country.

1750 Mr. {Kinzinger.} I agree, and I would love to see
1751 positive conversation and flexibility when it comes to your
1752 role in this because I think, you know, listening to the
1753 states on the ground that have a real interest in this that,
1754 you know, live this day-by-day, you know, I fly airplanes, I
1755 am not a manufacturer so I listen to a lot of manufacturers
1756 about what works with that. It has become an--so I would
1757 hope you would listen to states in this process and
1758 understand what situations may come along.

1759 With that, I will yield back.

1760 Mr. {Whitfield.} Gentleman yields back.

1761 At this time recognize the gentlelady from Florida, Ms.
1762 Castor, for 5 minutes.

1763 Ms. {Castor.} Thank you very much, Mr. Chairman. And
1764 welcome, Administrator McCabe.

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1765 As--under current laws, EPA begins down the road with
1766 the Clean Power Plan, you--EPA will set the overall carbon
1767 emission reduction goals under Section 111(d) of the Clean
1768 Air Act, and then it is up to states to determine how best to
1769 achieve the reductions. And as states begin to set the goals
1770 and establish plans for carbon reduction, it is clear that
1771 consumers' pocketbooks will be better off when states plan
1772 ahead, and when they use many different and varied tools to
1773 reduce carbon emission. You mentioned a few here today.
1774 Conservation plans for states, are they going to be--
1775 consumers going to be better off if a state has a robust
1776 conservation plan?

1777 Ms. {McCabe.} Yes, they will.

1778 Ms. {Castor.} And energy efficiency?

1779 Ms. {McCabe.} Yes, absolutely.

1780 Ms. {Castor.} So what do you say to states that are
1781 moving backwards on that today?

1782 Ms. {McCabe.} Well, it seems that there are
1783 opportunities out there that we would think every state would
1784 want to take advantage of, and some states are further ahead
1785 than others and that is what the Clean Power Plan

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1786 anticipates, is that those kinds of measures will indeed be
1787 implemented.

1788 Ms. {Castor.} Wouldn't that raise a red flag for
1789 consumers if they know, okay, we have to have--we have to
1790 reduce carbon pollution but then leadership at the state
1791 level says, well, we are--our idea of doing that is to
1792 eliminate conservation goals, shouldn't that raise a red flag
1793 for consumers and their pocketbooks?

1794 Ms. {McCabe.} Well, a lot of Americans across the
1795 country are very smart about these issues, and we are hearing
1796 that they are in favor of moving forward with this kind of
1797 plan for both the economic and the public health benefits
1798 that it will provide.

1799 Ms. {Castor.} Now, what is the starting line on this?
1800 What--for states, what is the--what do you tell them is the
1801 baseline, because you have to establish a place in time where
1802 all states have to start, and then measure their plans and
1803 their goals for reduction.

1804 Ms. {McCabe.} Right. So we started with 2012. This is
1805 a rule that requires us, as I have mentioned this morning, to
1806 look around and see the effective measures that are being

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1807 used, and have an expectation that those will be increasingly
1808 used all across the country. So that is what we did, but we
1809 looked at states where they were in 2012 and projected
1810 forward.

1811 Ms. {Castor.} So if they have reduced their carbon
1812 emissions from 2012, they will get some credit towards that--
1813 their state goals.

1814 Ms. {McCabe.} Well, their carbon emissions are down.
1815 They have already taken steps to implement energy
1816 efficiencies, invest in renewables, their carbon emissions
1817 are already going down so they are that much closer to their
1818 goal.

1819 Ms. {Castor.} Is there any way for a state to get
1820 credit for reduction prior to that date of 2012?

1821 Ms. {McCabe.} Well, this is a good issue, and a lot of
1822 people have raised it to us and given us different ideas
1823 about it. The key issue is any reduction made early is a
1824 reduction that doesn't need to be made later. So that is a
1825 very good thing for people to do, and as you have noted,
1826 planning, having a robust planning process is going to make
1827 it the most cost-effective, affordable, and reliable as the

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1828 states implement their plans.

1829 Ms. {Castor.} Now, one of the problems I see in--
1830 especially in my home State of Florida where the costs of the
1831 changing climate are so severe in the years is the problem
1832 the state utility framework and how--and the costs that they
1833 can consider because, typically, in the Public Service
1834 Commission framework and utility regulations, they don't
1835 consider costs of flood insurance, because the--of sea level
1836 rise, they don't consider cost of property insurance
1837 increases on consumers, they don't have to take into account
1838 increases to property taxes when a local government has to
1839 address flooding from storm water. Can the EPA provide any
1840 guidance to states on this, or you say you have all the
1841 flexibility in the world, states, and you need to consider
1842 those costs broadly?

1843 Ms. {McCabe.} Well, we do give--the Clean Air Act gives
1844 the states the flexibility to do that. I will note that we
1845 predict in our regulatory impact analysis a significant debt
1846 economic benefits from this rule on the order of 30 to \$49
1847 billion, and that is taking into account the expected
1848 benefits to constituents like yours in Florida that are

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1849 seeing the impacts of climate change today.

1850 Ms. {Castor.} I am sorry, I have ran out of time.

1851 Thank you.

1852 Mr. {Whitfield.} At this time recognize the gentleman
1853 from Virginia, Mr. Griffith, for 5 minutes.

1854 Mr. {Griffith.} Thank you very much, Mr. Chairman.

1855 In response to your answers to several people, including
1856 Representatives McKinley and Pompeo, I would just have to
1857 point out that the Virginia State Corporation Commission does
1858 not agree with you that this is going to somehow make the
1859 price of electricity go down, and I quote, ``To achieve the
1860 carbon emission reductions required by the proposed
1861 regulations, customers in Virginia will likely pay
1862 significantly more for their electricity. The incremental
1863 cost of compliance from one utility alone, Dominion Virginia
1864 Power, which only serves 2 of the 29 jurisdictions I
1865 represent, would likely be between \$5.5 and \$6 billion on a
1866 net present value basis in addition to new investment,
1867 Virginia residences and businesses will also be responsible
1868 for paying remaining costs for useful existing facilities
1869 forced to retire prematurely under the proposed regulation.

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1870 The proposed regulation places a risk several billions of
1871 dollars of recent investments in existing coal-fired
1872 facilities. Contrary to the claim that rates will go up but
1873 bills will go down, experience and costs in Virginia make it
1874 extremely unlikely that either electric rates or bills in
1875 Virginia will go down as a result of the proposed
1876 regulation.'' Now, I assume that you are aware that the
1877 Virginia State Corporation Commission is not some private
1878 body of electric generators, that is the regulatory agency
1879 that sets the electric rates in Virginia, that says what the
1880 companies can charge, and they say, just to one company, it
1881 is going to cost 5 to \$6 billion. When you add in all the
1882 other companies, it is going to be billions, and that it is
1883 highly unlikely that the rates will go up but the bills will
1884 go down, they said extremely unlikely, let me get it correct.
1885 I said highly, they said extremely unlikely that either
1886 electric rates or bills in Virginia will go down as a result
1887 of the proposed regulation. So I just point that out to you
1888 so when others say please listen to these folks, they have
1889 decades of experience in figuring out what the rate is
1890 supposed to be so that the electric companies don't charge

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1891 too much, but get a return for their heavy investment.

1892 Now, that being said, you also indicated that folks were
1893 moving to gas-based generation because it is more affordable.

1894 That is true today, although even last year for a number of
1895 months, the rate was over--the cost of natural gas was higher

1896 than that which it cost to create the same number of BTUs

1897 with coal, that fluctuates, but further, you have to build

1898 pipelines. Now, right now in my district, there is a big

1899 pipeline being proposed to be built, and in the non-coal-

1900 producing areas of my district, people are opposed to that

1901 pipeline because they are not sure that at that size it is

1902 going to be safe. So I submit to you that we may not be

1903 ready in 2020. And further, I would ask, don't you all work

1904 with the DOE, because they are working on clean coal

1905 technologies and they have indicated to us that it will be

1906 probably about 2025 before those new technologies are

1907 onboard. But according to your plan, at least as we have

1908 heard about it up to this point, you keeping out it is not

1909 final yet. The states are supposed to come up with their

1910 plan 13 months after the final rule, so this is 2015, some

1911 time in 2016, Virginia is going to have to come up with a

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1912 plan. They can't wait until 2025 when the new technologies
1913 will be viable, and there are 5 or 6 clean coal technologies
1914 looking really promising. How much greater benefit are we
1915 going to get as a society in that 5 or 6 or 7-year period
1916 that we are going to put lots of people out of business,
1917 raise the cost of electricity, and yet the technologies are
1918 almost there? I would submit the plan is flawed and that is
1919 why we need this bill.

1920 I would also say to you, and I don't have to ask this
1921 from any legal standpoint, if one state were able to pull out
1922 of your plan under a legal theory, would that destroy your
1923 plan, yes or no?

1924 Ms. {McCabe.} It would be inconsistent with the way the
1925 Clean Air Act works, and it would be disruptive.

1926 Mr. {Griffith.} But you understand that Laurence Tribe,
1927 when he was here to testify, I asked him about collateral
1928 stopple on the cast that I asked you about last time, where
1929 the EPA lawyers conceded that you didn't have the power under
1930 111(d) to do this regulation, he said collateral stopple
1931 would only work, or res judicata would only work for the
1932 state of New Jersey if they chose to use it. You could lose

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1933 on that point. Now, I don't think you are right on 111(d)
1934 anyway. I don't think you have that authority. It is
1935 interesting though that this bill would say that all of these
1936 cases would have to go forward, but this Thursday, you are
1937 arguing in front of the Circuit Court of Appeals that it is
1938 premature to bring the court case that says you don't have
1939 the underlying authority. Wouldn't it be great to go ahead
1940 and get the Supreme Court to decide whether any of this
1941 regulation, final or otherwise, whether you had the authority
1942 to regulate at all under 111(d) in the existing power
1943 facilities and the electric generation units, wouldn't that
1944 be great to go ahead and get that out of the way? And why
1945 would you all want to stall that, and wouldn't this bill, if
1946 passed, encourage you all for judicial efficiency to go ahead
1947 and let's find out whether or not you have the power to do
1948 what you say you do. I don't think you do. You think you
1949 do. The Supreme Court has yet to rule. The more you delay
1950 makes this bill more practical. Your arguments on Thursday
1951 make me want to carry this bill.

1952 Thank you very much, and I yield back.

1953 Mr. {Whitfield.} At this time recognize the gentleman

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1954 from California, Mr. McNerney, for 5 minutes.

1955 Mr. {McNerney.} Thank you, Mr. Chairman.

1956 Ms. McCabe, I--in light of the fact that human-caused
1957 climate change is advancing, and that the impacts are going
1958 to be more and more severe over time, I have suggested to my
1959 colleagues that have coal-fired interests that they embrace
1960 carbon sequestration, carbon capture sequestration sort of to
1961 protect their local industries. How would the implementation
1962 of CCS impact coal-fired power plants under the Clean Air
1963 Plan?

1964 Ms. {McCabe.} CCS would be a technology the state could
1965 choose to build into its plan as a way of reducing carbon
1966 emissions from their coal fleet.

1967 Mr. {McNerney.} So in a sense, it would protect their
1968 coal-fired power plants, and coal miners and go on down the
1969 line.

1970 Ms. {McCabe.} That is correct.

1971 Mr. {McNerney.} Thank you. Have you studied the
1972 discussion draft?

1973 Ms. {McCabe.} Yes, I have.

1974 Mr. {McNerney.} Do you think that carbon emissions

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1975 would be reduced under the Clean Air Plan if this bill is
1976 adopted?

1977 Ms. {McCabe.} I don't think it would be. I think it
1978 would all be delayed.

1979 Mr. {McNerney.} Delayed? More than delayed, do you
1980 think it would be disrupted?

1981 Ms. {McCabe.} Perhaps, yes.

1982 Mr. {McNerney.} Have the states worked well with the
1983 EPA to develop the Clean Power--you know, under the Clean Air
1984 Act, and have they worked together well with--under the Clean
1985 Air Act?

1986 Ms. {McCabe.} Absolutely. There has been tremendous
1987 discussion from states all across the country. We continue
1988 to have those discussions.

1989 Mr. {McNerney.} Well, my region is the central valley
1990 of California, the northern part of that central valley. If
1991 this bill is adopted, how do you think that would affect the
1992 air quality in that region?

1993 Ms. {McCabe.} Well, it would mean that states would
1994 delay, in the first instance, putting their plans together,
1995 not just California but all states would, and as states

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1996 having the option to opt out of the plan altogether could
1997 certainly impact California.

1998 Mr. {McNerney.} Thank you. FERC recently had a
1999 listening session on the Clean Power Plan. What was your
2000 takeaway from those hearings?

2001 Ms. {McCabe.} Those were very interesting
2002 conversations. We very much appreciated being a part of
2003 them. I think we heard a lot of the things that we have been
2004 hearing from people in their public comments to us, which
2005 makes sense. A lot of good questions, a lot of good
2006 discussion, interest by FERC in making sure that they
2007 understand how they can be helpful to EPA as we go forward
2008 and do our job under the Clean Air Act. So I think it has
2009 served as another opportunity for people to raise their
2010 concerns, and also as a basis for ongoing conversation.

2011 Mr. {McNerney.} So in your opinion, it was a positive
2012 conversation.

2013 Ms. {McCabe.} Absolutely.

2014 Mr. {McNerney.} Are you having those types of
2015 conversations in states about the Clean Power Plan?

2016 Ms. {McCabe.} Certainly, yes.

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2017 Mr. {McNerney.} And a lot of those are productive.

2018 Ms. {McCabe.} They are. They are.

2019 Mr. {McNerney.} Are there many that aren't productive?

2020 Ms. {McCabe.} Well, I think when states come and sit
2021 down with us, they have questions about how to go forward
2022 with this, and we are working with them on the kinds of
2023 resources that they will need, technical resources, training
2024 that they will need. There is great interest. And I
2025 recognize that there is controversy as well, but when we sit
2026 down with the environmental regulators, they are focusing in
2027 on how to make this work.

2028 Mr. {McNerney.} Do they share the kind of concern about
2029 economic impact we are finding here today?

2030 Ms. {McCabe.} I think everybody wants to make sure that
2031 we can implement this program just as we have implemented so
2032 many under the Clean Air Act in a way that preserves
2033 affordable and reliable electricity for this country, but
2034 also delivers the billions of dollars of benefits to the
2035 public health and welfare and to the economy of this country
2036 that, over the years through the Clean Air Act, has delivered
2037 for the American people.

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2038 Mr. {McNerney.} So would you say that the effort to
2039 reduce sulfur dioxide emissions had a positive impact on the
2040 economy?

2041 Ms. {McCabe.} Absolutely, I would, yes.

2042 Mr. {McNerney.} And your opinion that this Clean Air
2043 Plan could be similar in its results?

2044 Ms. {McCabe.} And it is absolutely essential, given the
2045 threat to our country that climate change poses.

2046 Mr. {McNerney.} Thank you. I yield back.

2047 Mr. {Whitfield.} At this time recognize the gentleman
2048 from Ohio, Mr. Johnson, for 5 minutes.

2049 Mr. {Johnson of Ohio.} Thank you, Mr. Chairman. And,
2050 Ms. McCabe, thank you for being here with us today.

2051 I--you know, I am in favor of both gas-fired and coal-
2052 fired power to heat and cool our homes and run our
2053 businesses. I think we need both, and I think that is very
2054 clear. I see a dichotomy though, a conflict, between
2055 building block 2 and building block 1 of the proposal. In
2056 building block 2, the EPA assumes that gas plants will run
2057 far more, at a 70 percent capacity factor, in order to run
2058 coal-fired plants, far less. This will reduce the heat rate

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2059 efficiency of coal-fired plants because running any plant
2060 less, and on an intermittent basis, always reduces
2061 efficiency. Anybody that understands the science and
2062 technology of coal-fired power understands that. So what
2063 this says to me is that building block 2, which calls for
2064 running coal plants less, is at odds with the goals of
2065 building block 1, which calls for improving the heat rate of
2066 coal-fired plants. You can't run coal-fired plants less,
2067 while running gas plants more, and then turn around and argue
2068 that the heat rate of coal plants should be improved. To me,
2069 this seems an obvious example of using big government--
2070 implementing rules that are practically impossible for an
2071 industry to meet; in this case, the coal-fired industry.

2072 So my question to you is, did the EPA consider that the
2073 amount of switching to natural gas effectively required by
2074 this rule would require coal-fired plants to operate less,
2075 thus driving up heat rates substantially, while eliminating
2076 the heat rate at the coal units? Help me understand this
2077 conflict.

2078 Ms. {McCabe.} Well, so one thing, it is important to
2079 note that the building blocks we used were not a prescriptive

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2080 formula for every state, or for any state. It was a way of
2081 characterizing the kinds of approaches that are used that
2082 reduce carbon. And we do predict that there will continue to
2083 be base load coal-fired power plants providing power.

2084 Mr. {Johnson of Ohio.} Okay, so I can to my other
2085 questions, let's--let me stay focused here.

2086 Ms. {McCabe.} Yes.

2087 Mr. {Johnson of Ohio.} Would you agree--I understand
2088 that, so it was not a prescriptive formula--

2089 Ms. {McCabe.} Yeah.

2090 Mr. {Johnson of Ohio.} --but would you agree that
2091 requiring coal plant to run less in one section, and then
2092 mandating that it improve its heat rate efficiency in another
2093 section, that that is a dichotomy, that is--those are--those
2094 2 things are in conflict?

2095 Ms. {McCabe.} Well, I understand that when--

2096 Mr. {Johnson of Ohio.} I mean that is a--that--I mean
2097 you understand the technology, that is a yes or no question.

2098 Ms. {McCabe.} I do understand the technology, and it
2099 can be harder to run as efficiently when you are running
2100 less, but there--

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2101 Mr. {Johnson of Ohio.} Okay, I will take that as the
2102 answer. I personally feel that this demonstrates an extreme
2103 shortcoming of the proposal, Ms. McCabe, because what may be
2104 called flexibility is really the closure of a significant
2105 percentage of the plants that power America. Even before
2106 111(d) takes effect, we will have huge numbers of retirements
2107 of coal-fired plants because of that intermittent, on and off
2108 again, running less situation.

2109 It is also clear, turning back to some of the questions
2110 for the areas that some of my colleagues have addressed, that
2111 at the same time states would be developing the plans, there
2112 will be serious legal questions about the Clean Power Plan
2113 regulatory scheme. And I heard one of my colleagues ask the
2114 question earlier that the EPA, by its own track record, is
2115 unlikely to be providing timely guidance and assistance to
2116 the states, and the agency appears not to want to consider
2117 slowing down the process time. Whatever the confident
2118 assurances of the agency are, this is going to be a very
2119 messy process, and I think that everyone understands it.

2120 So why would you not want to resolve the legal issues
2121 before you and your agency go through the work, and you put

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2122 the states and the industry through all this problem? Why
2123 would you not support wanting to let the legal issues work
2124 themselves out? What is the rush to judgment on this that is
2125 in our interest before we answer the legal questions about
2126 whether or not you guys should be able to do this or not?

2127 Ms. {McCabe.} Well, first, Congressman, there is no way
2128 that the Administrator would sign a rule that she did not
2129 believe was fully within her authority. So we--

2130 Mr. {Johnson of Ohio.} So can you tell me that you
2131 think that there are not going to be legal challenges to
2132 this? I mean and have you guys not listened to--or have you
2133 not heard the many voices that are decrying the EPA's
2134 authority to do this?

2135 Ms. {McCabe.} We have heard many of those--

2136 Mr. {Johnson of Ohio.} Why wouldn't you want the courts
2137 to make that determination before--I mean you have seen your
2138 budget drop 20 percent over the last 5 years. Your staffing
2139 levels continue to come down, and you complain that you don't
2140 have enough money to do what you are supposed to do, or
2141 enough people to do what you are supposed to do. Why would
2142 you want to take on something that you might have to turn

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2143 around and throw away if the courts decide you didn't have
2144 the authority to do this?

2145 Ms. {McCabe.} Because--

2146 Mr. {Johnson of Ohio.} I am out of time, Ms. McCabe. I
2147 am sorry. I wish I could give you time to answer that
2148 question, but that just seems like a flawed approach, and not
2149 in the best interests of hard-working Americans to spend
2150 their money this frivolously on something that we know the
2151 courts have major questions about.

2152 Mr. Chairman, I yield back.

2153 Mr. {Whitfield.} Yeah, the gentleman's time has
2154 expired.

2155 At this time recognize the gentlelady from North
2156 Carolina, Mrs. Ellmers, for 5 minutes.

2157 Mrs. {Ellmers.} Thank you, Mr. Chairman. And thank
2158 you, Ms. McCabe, for being with us today.

2159 You know, I have listened to so much of the testimony
2160 and the questions, and I think this is a very well-rounded
2161 discussion that we are having. And again, you know, for me
2162 and my constituents back in North Carolina, this is obviously
2163 going to negatively impact the consumers and their utility

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2164 bills. It is going to increase the cost. And I understand
2165 the issues. You know, certainly, we all want clean air, we
2166 want to do everything we can to achieve that, but I do have
2167 some specific questions. When we are talking about the
2168 litigation moving forward and, you know, you had mentioned in
2169 the budget proposal that the EPA expects a great deal of
2170 litigation, and this kind of comes up again after Mr.
2171 Johnson's testimony, you know, one, what type of litigation
2172 are you anticipating, and how long do you expect the judicial
2173 review of the initial legal challenges to take?

2174 Ms. {McCabe.} So we do expect legal challenges. EPA
2175 gets challenged on many of its rules, as you know, and it can
2176 take several years. If it goes all the way to the Supreme
2177 Court, that can add time to it. And then even after that, it
2178 could go back--if it goes to the Supreme Court, it could go
2179 back to a lower court for further proceedings.

2180 Mrs. {Elmers.} Given that fact and, you know,
2181 obviously, we are looking at an incredible amount of time,
2182 years, in fact, you know, we are still looking at the
2183 situation and we are, you know, we are hearing from our
2184 states, and I certainly am hearing from North Carolina, how

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2185 this is going to be very, very difficult as they are trying
2186 to go through the rule and address the issues. You know,
2187 there is a 1-year extension that is proposed in the rule, but
2188 that obviously is not adequate in the timeline that we are
2189 talking about. So given the fact that we know that this
2190 could, you know, litigation could move forward for years, how
2191 does the EPA plan on dealing with this issue? Will they
2192 demand that the states be required to submit their state
2193 plans, or are they going to hold back on that issue, allowing
2194 the states to see what the courts are going to do?

2195 Ms. {McCabe.} Well, Congresswoman, the judicial system
2196 already has a way of dealing with this. So as I have said,
2197 EPA gets challenged on many rules. In this Administration,
2198 most of our rules have been found to be lawful, and work has
2199 gone ahead on them. If a court finds that our legal basis is
2200 so questionable that they think that we are not likely to
2201 succeed on the merits, they can in response to a request put
2202 a judicial stay in place that would then toll the
2203 requirements, and that has happened on occasion. We don't
2204 believe that a court will find a substantial likelihood that
2205 we will not succeed.

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2206 Mrs. {Ellmers.} And there again, you know, to that
2207 point, and thank you, you know, that would certainly help the
2208 situation, but it is--it also doesn't alleviate the cost that
2209 the state--that our states are incurring. This will be an
2210 incredible cost to North Carolina, as it will all of my
2211 colleagues and the states that they represent. You know,
2212 according to the Unfunded Mandate Reform Act, the EPA is
2213 required to estimate the burden on states to develop state
2214 plans. So considering this and considering the length of
2215 time we are looking at, what does the EPA estimate will be
2216 the cost to states to prepare state plans?

2217 Ms. {McCabe.} I believe we estimated that. I don't
2218 have those numbers with me, Congresswoman, but we can get
2219 them.

2220 Mrs. {Ellmers.} Okay, if you could provide that to the
2221 committee and also to my office, I would appreciate that.
2222 Thank you. And in light of the comments that have been made
2223 regarding the proposed Clean Power Act, is the EPA going to
2224 reevaluate these estimates, so moving forward, as the
2225 comments are being made, is there a process to reformulate
2226 the plan, or are we sticking to the plan until the process is

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2227 through? Will you adjust and be flexible to the comments
2228 that you are receiving?

2229 Ms. {McCabe.} Absolutely, and you will see that in the
2230 final rule that we will have been responsive to many of those
2231 comments.

2232 Mrs. {Ellmers.} In my last 40 seconds that I have, I do
2233 want to go back to a question that my colleague from Illinois
2234 asked, Mr. Kinzinger. He was asking if the EPA is the only
2235 agency, and then you had also commented to one of my other
2236 colleagues that you were working with FERC, and that there
2237 were hearings with FERC. If FERC comes forward and tells
2238 you, in fact, again, going off of Mr. Kinzinger, that there
2239 is a reliability issue, that there is a national security
2240 issue with this, will the EPA take that recommendation and
2241 use that moving forward?

2242 Ms. {McCabe.} Well--

2243 Mrs. {Ellmers.} Are you required to do so?

2244 Ms. {McCabe.} We are so far away from states developing
2245 plans that anybody could make a sound judgment on reliability
2246 about. So we will do our job under the Clean Air Act. We
2247 will take into consideration any input that we get from

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2248 anybody. We certainly will listen very seriously to any
2249 input that FERC wants to give us, but we are just not at a
2250 point where anybody could make that pronouncement at this
2251 point.

2252 Mrs. {Ellmers.} Thank you. Thank you, Mr. Chairman. I
2253 went over my time a little bit.

2254 Mr. {Whitfield.} At this time I recognize the gentleman
2255 from Oklahoma, Mr. Mullin, for 5 minutes.

2256 Mr. {Mullin.} Thank you, Mr. Chairman.

2257 Ma'am, I really almost feel for you because the way that
2258 you are sitting here having to take these questions I can
2259 tell you are just having, you know, a blast doing it. And I
2260 am meaning that a little cynical there, but you are here and
2261 I really do appreciate that.

2262 However, I do question the direction that the EPA is
2263 going with this. I have heard you talk about that many, many
2264 Americans believe with you and there are with you on this,
2265 but yet all the reports we keep hearing back over and over
2266 again isn't true. I mean the only many, many Americans I
2267 assume you are talking about is Sierra Club and some of our
2268 minimalists who live in the city and they don't ever live in

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2269 the country, which I find quite hilarious sometimes because
2270 if you are an environmentalist, you would think you would
2271 want to live in the environment.

2272 But besides that, you go into the fact that you are
2273 saying that you are not going to reduce the amount of energy
2274 being generated, is that right? You don't find a concern
2275 with the amount of energy being generated?

2276 Ms. {McCabe.} Well, we think there are many
2277 opportunities to employ energy efficiency that--

2278 Mr. {Mullin.} What are those opportunities because just
2279 in Oklahoma alone just in my district we are going to lose
2280 3,000 gigawatts, which is about 70 percent of our coal-fired
2281 power plants. Southwestern Power, who represents that region
2282 there, they are saying they are going to lose 13,900
2283 megawatts. What is going to replace that?

2284 Ms. {McCabe.} Well, I am not sure exactly what the SPP
2285 is basing all those predictions on.

2286 Mr. {Mullin.} Ma'am, these are the figures that are
2287 coming from the individuals that are providing my
2288 constituents and providing my region with power.

2289 Ms. {McCabe.} Right.

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2290 Mr. {Mullin.} Now, if the EPA is doing their due
2291 diligence by understanding the research that they are putting
2292 out there and before you come in front of Congress and you
2293 start relaying these facts that you don't believe it is going
2294 to reduce power, what do you think about talking to the
2295 stakeholders? I mean these are the individuals that are
2296 responsible for providing reliability to us that when we go
2297 and we flip our switch on, it is going to work.

2298 Ms. {McCabe.} We certainly are talking with all of
2299 these entities, including--

2300 Mr. {Mullin.} So what is going to replace this?

2301 Ms. {McCabe.} It will be different kinds of generation.
2302 I can't speak to all of them--

2303 Mr. {Mullin.} What kind of generation are you going to
2304 replace it with because not all regions are the same? We
2305 don't have the same flexibility as everybody else.

2306 Ms. {McCabe.} That is right.

2307 Mr. {Mullin.} The infrastructure isn't in place yet.
2308 The EPA is moving on with this rule. I mean you are talking
2309 about saying it is not going to reduce reliability, but
2310 ma'am, the fact is it will reduce it. If we are taking that

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2311 much off online, wouldn't the EPA have some type of study out
2312 there to back up what you are saying that it is not going to
2313 shut down or reduce reliability? Wouldn't you think there
2314 would be something out there that you could back up what you
2315 are bringing facts as I am assuming the rest of America is
2316 going to believe you are backing your statements up with
2317 facts, aren't you?

2318 Ms. {McCabe.} Absolutely. And--

2319 Mr. {Mullin.} So what are those facts?

2320 Ms. {McCabe.} We have analysis; the Department of
2321 Energy has done various kinds of analysis.

2322 Mr. {Mullin.} What is it that you are talking about
2323 specifically? What is going to replace it?

2324 Ms. {McCabe.} Well, as you have said, every state is
2325 different. Their needs and their flexibilities are
2326 different. There is--

2327 Mr. {Mullin.} But you are treating all states the same.

2328 Ms. {McCabe.} No, we are not treating all states the
2329 same.

2330 Mr. {Mullin.} Really?

2331 Ms. {McCabe.} No.

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2332 Mr. {Mullin.} Well, you are making them all combined.

2333 Ms. {McCabe.} We are setting targets for them that are
2334 based on a uniform approach across--

2335 Mr. {Mullin.} Which is a one-size-fits-all approach
2336 which is--

2337 Ms. {McCabe.} It is--

2338 Mr. {Mullin.} You said a uniform approach.

2339 Ms. {McCabe.} No, no, it is not one-size-fits-all.

2340 Mr. {Mullin.} Well, uniform is everybody looks the
2341 same. That is the purpose of a uniform.

2342 Ms. {McCabe.} Okay. Well, then I will change my word.
2343 This is not one-size-fits-all. This is an approach that
2344 takes into account the energy needs and the energy resources
2345 of every single state.

2346 Mr. {Mullin.} Okay. Ma'am, we are going to agree to
2347 disagree on that one because the fact is you are talking in
2348 circles.

2349 Now, let's go back to the thing, and as you said, that
2350 it is not going to cost the individual, the ratepayer, it is
2351 not going to raise their cost. Isn't that what you said?

2352 Ms. {McCabe.} That is what our national analysis shows.

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2353 Mr. {Mullin.} Where are you getting that statement
2354 because Southwestern Power says it is going to cost them \$2.9
2355 billion per year to comply. \$2.9 billion per year. Now, if
2356 you understand business at all, you understand that that has
2357 to be passed through to somebody. So if it is going to cost
2358 Southwestern Power \$2.9 billion per year, who is going to pay
2359 for that?

2360 Ms. {McCabe.} There are investments that everybody is
2361 making that they look at over time. Remember, we have a long
2362 period of time to implement this.

2363 Mr. {Mullin.} Who is going to pay the \$2.9 billion a
2364 year? It is not just investments. It has got to be passed
2365 on to somebody. Is the EPA going to pay that out of your
2366 budget?

2367 Ms. {McCabe.} What our analysis shows and what other
2368 people look at is--

2369 Mr. {Mullin.} The analysis, ma'am, we have already
2370 proved that your analysis isn't lining up. It is an
2371 assumption. You keep calling it an analysis; it is an
2372 assumption that you are calling an analysis. The truth is
2373 the \$2.9 billion, the cost has to be passed on to somebody,

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2374 and ultimately, it is going to be all of our constituents
2375 that are going to be paying for it. And it looks like to me
2376 that the EPA's analogy is, well, we know best. Just shut up
2377 and follow us. You weren't elected, we were, and we were
2378 elected to represent our constituents.

2379 Thank you.

2380 Mr. {Whitfield.} The gentleman's time is expired. Is
2381 Mr. Flores around? Does anyone know?

2382 Okay. Well, I guess that concludes the questions for
2383 Ms. McCabe.

2384 Mr. {Rush.} Mr. Chairman?

2385 Mr. {Whitfield.} Yes.

2386 Mr. {Rush.} Mr. Chairman, I just heard a number of
2387 members have questions about the EPA's analysis and somebody
2388 is suggesting that EPA didn't even have enough analysis. And
2389 I just wanted to inform the chair and the other members that
2390 here I have in my possession I have about--this is about 10
2391 to 12 pounds of analysis from the EPA and the regulatory
2392 impact analysis for the proposed carbon pollution guidelines
2393 for assisting power plants and emissions standards for
2394 modified and reconstructed power plants. I would be happy to

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2395 move that this be included in the record. So in order to be
2396 said again and again and again that the EPA does not have an
2397 analysis and here it is. This is about 10 pounds of it and
2398 so I don't know. I would be happy if the chairman wants or
2399 desires I would be happy to move that this get included into
2400 the record so that we can just put to rest the fact that EPA
2401 does not have an analysis.

2402 Mr. {Whitfield.} Well, let me just say we understand
2403 the EPA has a lot of analyses and we have a lot of
2404 industries, utility companies, local communities that have
2405 analyses as well and they don't agree. So that is where we
2406 are.

2407 Mr. {Rush.} Well, Mr. Chairman, I just want to say it
2408 has been stated here so many times it is almost hurtful and
2409 harmful to keep hearing that the EPA doesn't have an
2410 analysis. Here it is, 10 to 12 pounds.

2411 Mr. {Whitfield.} So are you moving that we put it in
2412 the record?

2413 Mr. {Rush.} I don't know, Mr. Chairman. It will take
2414 up too much--

2415 Mr. {Whitfield.} Yes.

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2416 Mr. {Rush.} --probably take up too much paper and too
2417 much--

2418 Mr. {Whitfield.} Well, thank you so much for bringing
2419 it to our attention.

2420 Mr. {Rush.} I want you to know that there is your
2421 analysis.

2422 Mr. {Whitfield.} We appreciate that.

2423 Mr. {Rush.} Here it is right here.

2424 Mr. {Whitfield.} Ms. McCabe, thank you for being with
2425 us today. We are to continue to engage you and EPA on this
2426 issue as we move forward.

2427 At this time I would like to call up the second panel.
2428 And on the second panel, we appreciate your patience this
2429 morning. We have Mr. Eugene Trisko. I tell you what I am
2430 going to do. I want all of you to just come on up and I am
2431 going to introduce you right before you give your 5-minute
2432 opening statement.

2433 So if you all would have a seat and then we will begin
2434 on the left with Mr. Trisko and then we will let each one of
2435 you give your 5-minute opening statement.

2436 So our first witness this morning is Mr. Eugene Trisko,

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2437 who is the energy economist and attorney on behalf of the
2438 American Coalition for Clean Coal Electricity.

2439 And once again, thank all of you for being here. Thanks
2440 for your patience. We do value your comments and thoughts on
2441 this important issue.

2442 So, Mr. Trisko, I am going to recognize you for 5
2443 minutes, and you will note that there is a little box on the
2444 table, two of them. They have colors, and when it gets red,
2445 that means the 5 minutes is up. So just be aware of that.
2446 And also be sure and turn the microphone on so that all of us
2447 can hear.

2448 And, Mr. Trisko, you are recognized for 5 minutes.

2449 [Audio malfunction in hearing room.]

2450 Excuse me, Mr. Trisko, would you just move the
2451 microphone a little bit closer because some of our members
2452 were having a little bit of an issue. Thank you. Is your
2453 microphone on?

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2454 ^STATEMENTS OF EUGENE M. TRSKO, ENERGY ECONOMIST AND
2455 ATTORNEY, ON BEHALF OF THE AMERICAN COALITION FOR CLEAN COAL
2456 ELECTRICITY; LISA D. JOHNSON, CEO AND GENERAL MANAGER,
2457 SEMINOLE ELECTRIC COOPERATIVE, INC., ON BEHALF OF NATIONAL
2458 RURAL ELECTRIC COOPERATIVE ASSOCIATION; SUSAN F. TIERNEY,
2459 SENIOR ADVISOR, ANALYSIS GROUP; MELISSA A. HOFFER, CHIEF,
2460 ENERGY AND ENVIRONMENT BUREAU, OFFICE OF THE ATTORNEY
2461 GENERAL, COMMONWEALTH OF MASSACHUSETTS; KEVIN SUNDAY,
2462 MANAGER, GOVERNMENT AFFAIRS, PENNSYLVANIA CHAMBER OF BUSINESS
2463 AND INDUSTRY; AND PAUL CICIO, PRESIDENT, INDUSTRIAL ENERGY
2464 CONSUMERS OF AMERICA.

|

2465 ^STATEMENT OF EUGENE M. TRSKO

2466 } Mr. {Trisko.} Will this help? Should I go back to the
2467 top? We started at good morning.

2468 Mr. Chairman, we have analyzed consumer energy costs for
2469 31 geographically diverse states, and these states are
2470 expected to be states that will be heavily impacted by EPA's
2471 Clean Power Plan.

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2472 The 31 state reports analyzed the pattern of energy
2473 expenditures among three categories, a pretax and after-tax
2474 household income. The studies rely on actual state
2475 residential energy expenditures in 2014 from the U.S.
2476 Department of Energy's EIA and government surveys of
2477 residential and transportation energy consumption per
2478 household income groups. The household income data are based
2479 upon U.S. Bureau of the Census data for 2013, the most recent
2480 data available. Energy expenditures as a percentage of
2481 after-tax income are estimated for the effects of federal and
2482 state income taxes and federal social insurance payments
2483 using CBO tax rates and individual state income tax data.

2484 The key findings of these studies are: first, one-half
2485 of the households in these 31 states have average pretax
2486 annual incomes below \$50,000. The median after-tax income of
2487 these 38 million households is \$23,317, equivalent to a take-
2488 home income of less than \$2,000 per month. The 50 percent of
2489 households in these 31 states with pretax incomes of \$50,000
2490 or less spend 14 to 19 percent of their after-tax income on
2491 residential and transportation energy with median
2492 expenditures of 17 percent.

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2493 Low-income families, those with pretax annual incomes of
2494 less than \$30,000, represent 30 percent of the households in
2495 these 31 states. Their median after-tax income is 15,464.
2496 These households spend an estimated 18 percent to 25 percent
2497 of their after-tax income on residential and transportation
2498 energy with a median expenditure of 22 percent.

2499 Recent consumer savings at the gas pump are being eroded
2500 by steady increases in electricity prices. Residential
2501 electricity represents 76 percent of total residential energy
2502 expenditures in the 31 states on a household weighted average
2503 basis. From 2005 to 2014 residential electricity prices in
2504 the 31 states increased overall by a weighted average of 38
2505 percent in current dollars and by 13 percent in constant 2014
2506 dollars.

2507 Large electric pricing increases will result with the
2508 implementation of EPA's proposed Clean Power Plan. A recent
2509 analysis by National Economic Research Associates estimates
2510 that the carbon rule will increase delivered electricity
2511 prices in the 31 states by 15 percent on average during the
2512 period 2017 to 2031. These average price increases mean that
2513 electricity prices for consumers will be 15 percent higher on

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2514 average each year under the Clean Power Plan than they would
2515 be without the Clean Power Plan.

2516 Peak year electric price increases during this period
2517 average 22 percent for the 31 states. These estimates are
2518 conservative because NERA did not consider any additional
2519 natural gas infrastructure or electric transmission
2520 investments needed to comply with EPA's proposed rule.

2521 The U.S. Census Bureau reports that the real pretax
2522 incomes of American households have declined across all five
2523 income quintiles since 2001 measured in constant 2013
2524 dollars. The largest percentage losses of income are in the
2525 two lowest income quintiles.

2526 The loss of annual income among all American households
2527 averages \$3,947 per household since 2001. In comparison,
2528 DOE's current estimate of annual gasoline savings for
2529 American consumers due to lower oil prices is \$700 per
2530 household.

2531 Declining real incomes increase the vulnerability of
2532 lower income households to energy price increases such as
2533 rising utility bills. Lower income families are more
2534 vulnerable to energy costs than higher income families

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2535 because energy represents a larger portion of their household
2536 budgets. Energy costs reduce the amount of income that can
2537 be spent on food, housing, healthcare, and other basic
2538 necessities. The data presented in the 31-state report show
2539 that minorities and senior citizens are disproportionately
2540 represented among these lower income households.

2541 Thank you for the opportunity.

2542 [The prepared statement of Mr. Trisko follows:]

2543 ***** INSERT 2 *****

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|

2544 Mr. {Whitfield.} Mr. Trisko, thank you.

2545 And our next witness is Ms. Lisa Johnson, who is the CEO
2546 and general manager of the Seminole Electric Cooperative on
2547 Behalf of the National Rural Electric Cooperative
2548 Association. And your headquarters is in where?

2549 Ms. {Johnson.} Tampa, Florida.

2550 Mr. {Whitfield.} In Tampa, okay.

2551 You are recognized for 5 minutes and just be sure the
2552 microphone is on.

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2553 ^STATEMENT OF LISA D. JOHNSON

2554 } Ms. {Johnson.} Thank you, Mr. Chairman, Ranking Member
2555 Rush, and members of the committee. I appreciate the
2556 invitation to address the challenges facing electric
2557 cooperatives as we work to comply with EPA regulations.

2558 My name is Lisa Johnson. I am the CEO of Seminole
2559 Electric Cooperative, and I am also testifying on behalf of
2560 the National Rural Electric Cooperative Association.

2561 I applaud this committee's willingness to examine
2562 complex issues such as 111(d) regulations and work toward an
2563 equitable solution. While everyone can agree on the
2564 importance of environmental stewardship, regulations that
2565 would eliminate whole industries, drastically raise electric
2566 rates, and call into question the reliability of our nation's
2567 transmission grid are excessive and unnecessary.

2568 I am here today to express support for Chairman
2569 Whitfield's discussion draft, the Ratepayer Protection Act.
2570 This act would delay the Clean Power Plan to ensure that it
2571 survives legal challenge before taking effect and provide

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2572 states like Florida with an important safety valve for
2573 consumers and for the reliability of the grid.

2574 Seminole Electric Cooperative, through our nine-member,
2575 not-for-profit, consumer-owned electric cooperatives, serves
2576 more than 1.4 million individuals and businesses in 42 of
2577 Florida's 67 counties. The residential customers our members
2578 serve are predominantly rural. Approximately one-third have
2579 household incomes below the poverty level and more than 75
2580 percent have household incomes less than \$75,000.

2581 Seminole employs more than 500 individuals at three
2582 locations in Florida: our headquarters in Tampa; the Seminole
2583 Generating Station or SGS, a 1,300 megawatt coal-fired power
2584 plant located in northeast Florida; and the Midulla
2585 Generating Station, or MGS, an 810 megawatt natural gas-fired
2586 power plant located in south central Florida.

2587 SGS employs more than 300 individuals and provides more
2588 than 50 percent of the energy used by our members. Under the
2589 proposed Clean Power Plan SGS would close by 2020 despite
2590 being one of the cleanest coal plants in the country, despite
2591 Seminole's environmental investments of more than \$530
2592 million, and despite having a professionally rated useful

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2593 life that carries into 2045.

2594 Worse, the financing structure for SGS carries through
2595 2042. If the plant closes in 2020 our members will continue
2596 to pay for it in addition to paying for replacement
2597 generation.

2598 SGS is the bedrock of rural Putnam County. In addition
2599 to our hardworking employees, there often hundreds of
2600 contractors on-site. On March 11 there were 732 contractors
2601 at SGS addressing work during our spring maintenance outage.
2602 These contractors stay in local hotels, eat at local
2603 restaurants and shop at local retailers.

2604 Seminole is also the largest taxpayer in Putnam County
2605 paying more than \$5 million in property taxes in both 2013
2606 and 2014. Rural Putnam County and the city of Palatka cannot
2607 afford to lose SGS or any of the associated jobs, especially
2608 by 2020. Closing SGS prematurely would call into question
2609 our ability to generate and transmit electricity to our
2610 members. In 2014 more than 50 percent of our members' energy
2611 requirements were served via SGS. Seminole does not have
2612 sufficient natural gas facilities to serve this load
2613 adequately without our coal units.

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2614 And Seminole will not be the only utility in need of new
2615 sources of electricity. EPA's own model calls for the
2616 closure of more than 90 percent of Florida's coal-fired
2617 units. Florida's existing transmission constraints both in
2618 and out of state and EPA's short compliance timeline will
2619 prevent us from purchasing or building this power
2620 economically if it is feasible at all.

2621 The only viable option to replace SGS is natural gas.
2622 Florida is already 65 percent dependent on natural gas for
2623 generation and the likely effect of the Clean Power Plan is
2624 that this percentage will soar 85 percent. This overreliance
2625 on one fuel source exposes us to the price fluctuations and
2626 volatility common in the gas markets.

2627 The new gas-fired-generating facilities, transmission
2628 infrastructure, and pipelines needed to replace the output of
2629 just SGS cannot be permitted and completed by 2020 even if we
2630 started today. If the Clean Power Plan takes effect before
2631 the construction of sufficient generation or transmission
2632 infrastructure, significant power deficiencies may occur,
2633 harming reliability.

2634 The Clean Power Plan has failed to recognize the

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2635 economic impacts it would have on Seminole, our employees,
2636 our member cooperatives, and the communities we support. It
2637 is also failed to present a proposal that would maintain
2638 reliable electric service for our members and for Florida in
2639 general. As such, Seminole supports the Ratepayer Protection
2640 Act and urges this committee to continue its work to protect
2641 consumers.

2642 The best result for Seminole is for EPA to withdraw its
2643 proposal. In the absence of that, this legislation will
2644 protect Florida and Seminole by ensuring we do not have to
2645 comply with regulations that may be unlawful or may seriously
2646 harm consumers.

2647 A lot of us take it for granted that when we flip a
2648 switch, the lights come on. The Clean Power Plan as proposed
2649 will call that into question.

2650 Thank you.

2651 [The prepared statement of Ms. Johnson follows:]

2652 ***** INSERT 3 *****

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2653 Mr. {Whitfield.} Thank you, Ms. Johnson.

2654 At this time I would like to recognize Susan Tierney,

2655 who is the senior advisor with the Analysis Group. And

2656 thanks for being with us and you are recognized for 5

2657 minutes.

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2658 ^STATEMENT OF SUSAN F. TIERNEY

2659 } Ms. {Tierney.} Thank you, Mr. Chairman.

2660 Chairman, Ranking Member Rush, and members of the
2661 subcommittee, my name is Susan Tierney. I practice economics
2662 in the electric and natural gas industries. I am a former
2663 state utility regulator, a former state environmental
2664 official, and formerly the assistant secretary for policy at
2665 the United States.

2666 One out of every 15 tons of carbon emission anywhere in
2667 the entire world comes from the U.S. power sector. Taking
2668 action in the U.S. power sector will make a difference on the
2669 costly impacts of climate change.

2670 I want to talk about two reports that I have recently
2671 co-authored in which we found, first, that many observers
2672 have raised concerns about EPA's proposals and their effects
2673 on electric system reliability. Such warnings are entirely
2674 normal whenever there is a major change in the electric
2675 industry, and these warnings play an important role in
2676 focusing the attention of the industry on taking steps to

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2677 ensure reliable electric service to Americans.

2678 Second, natural gas is putting pressure on coal and has
2679 already led to retirements of coal unrelated to environmental
2680 regulations. Given the significant shifts already underway
2681 in the electric system, the industry is already needing to
2682 adjust its operational and planning practices to accommodate
2683 changes even if EPA had not proposed this regulation. The
2684 reliability practices in the industry have been used for
2685 decades and they provide a strong foundation from which any
2686 reliability concerns about EPA's regulations will be
2687 addressed.

2688 Third, the Clean Power Plan provides states with a wide
2689 range of compliance options and operational discretion that
2690 can prevent reliability issues while also enabling reduction
2691 of carbon pollution. Experience has shown that such
2692 approaches provide seamless reliable implementation of
2693 emissions reductions targets. By contrast, stakeholders
2694 concerns about the Clean Power Plan presume that there will
2695 be inflexible implementation. They are based on worst-case
2696 scenarios and assume that policymakers, regulators, and
2697 importantly, the market will standby on the side until it is

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2698 too late, and there is no historical basis for this. The
2699 lights have not gone out when we have had industry changes.

2700 Fourth, the industry, its regulators, and the states are
2701 responsible for ensuring electric system reliability while
2702 reducing carbon pollution from power plants, as required by
2703 law. These responsibilities need not be in tension as long
2704 as all parties act in a timely way and use the many
2705 reliability tools at their disposal. These issues will be
2706 solved by the dynamic interplay of actions by regulators,
2707 entities responsible for reliability, market participants, as
2708 they always are with many solutions proceeding in parallel.

2709 This one reason why a recent survey of 400 utility
2710 executives found that more than 60 percent felt optimistic
2711 about the Clean Power Plan and either supported the emissions
2712 reductions target or make them more stringent. The markets
2713 tend to respond to clarity and precision and rules rather
2714 than uncertainty of the sort that would be introduced by this
2715 bill.

2716 Fifth, PJM, the grid operator for the Nation's largest
2717 competitive wholesale market and serving customers in 13
2718 states and the District of Columbia, is already adapting to

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2719 changes underway in the electric industry. PJM's own
2720 analyses demonstrate that regional market-based approaches
2721 can meet clean power goals at lower cost with retirements
2722 spread out over a period of time. These results indicate
2723 that energy efficiency and renewable energy will in fact
2724 lower the cost of compliance and lower the exposure to coal
2725 plants associated with retirements.

2726 Based on our analyses and experience, we conclude that
2727 the impacts on electricity rates from well-designed pollution
2728 control programs will be modest in the near term and can be
2729 accommodated by long-term benefits, in other words, lower
2730 electricity bills and positive economic value to states'
2731 economies.

2732 States have a long track record of using various
2733 regulatory tools to encourage programs and investments that
2734 minimize the cost of electricity service consistent with all
2735 sorts of public policies ranging from taxes, zoning issues,
2736 environmental programs, reliability issues, labor
2737 requirements, and states figure out how to do that in a least
2738 cost way.

2739 Although states differ in many ways, every single state

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2740 has programs, policies, and practices that will enable them
2741 to sit in the driver's seat to figure out how to best
2742 accommodate changes being introduced by this important carbon
2743 control requirement. Market-based mechanisms in particular
2744 offer unique opportunities to minimize cost while reducing
2745 carbon pollution.

2746 And finally, states have a very long track record of
2747 taking steps necessary to protect low-income customers from
2748 the hardship associated with electricity rates.

2749 Thank you very much.

2750 [The prepared statement of Ms. Tierney follows:]

2751 ***** INSERT 4 *****

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|

2752 Mr. {Whitfield.} Thank you.

2753 Our next witness is Melissa Hoffer, who is the chief of
2754 the Energy and Environment Bureau, Office of the Attorney
2755 General for the Commonwealth of Massachusetts. So you are
2756 recognized for 5 minutes, Ms. Hoffer.

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2757 ^STATEMENT OF MELISSA A. HOFFER

2758 } Ms. {Hoffer.} Thank you, Chairman Whitfield.

2759 Mr. {Whitfield.} Is the microphone on? And move it
2760 close.

2761 Ms. {Hoffer.} Is that better?

2762 Thank you, Chairman Whitfield, Ranking Member Rush, and
2763 members of the committee. Our office really appreciates the
2764 opportunity to be here today to provide testimony on EPA's
2765 Clean Power Plan and the proposed Ratepayer Protection Act.

2766 Section 111(d) authorizes EPA to establish standards for
2767 any emissions from existing sources that endanger public
2768 health and welfare but are not regulated under the National
2769 Ambient Air Quality Standards program or the NAAQS program,
2770 or the Hazardous Air Pollutant program, the HAP program. The
2771 1970 Clean Air Act legislative history confirms that Congress
2772 intended that these three programs together would ensure no
2773 gaps in regulation of stationary source emissions that pose
2774 danger to public health or welfare. Courts have therefore
2775 held that these provisions collectively establish a

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2776 comprehensive program for controlling and improving the
2777 Nation's air quality.

2778 Let's be clear. Those who challenge EPA's authority are
2779 taking the position that simply because EPA is on the one
2780 hand regulating emissions of hazardous pollutants from power
2781 plants, it may not also regulate emissions of carbon dioxide,
2782 which is a different type of pollutant not regulated under
2783 the Hazardous Air Pollutant program. The Clean Power Plan
2784 imposes no double regulation of the same pollutant. Rather,
2785 it proposes to do exactly what Congress intended, use Section
2786 111(d) to regulate a pollutant that is not regulated under
2787 either the NAAQS or the HAP programs.

2788 It makes no sense that EPA's opponents would exclude the
2789 largest sources of carbon dioxide, which are power plants,
2790 from regulation under Section 111(d) simply because they also
2791 happen to be huge sources of different toxic air pollutants.
2792 That interpretation is not supported by the text of the
2793 statute or the legislative history of the 1990 amendments.

2794 The more reasonable interpretation is that Congress
2795 intended for EPA to do both. There is no evidence that
2796 Congress intended with the 1990 amendments to make a sweeping

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2797 substantive change to Section 111(d). In fact, to the
2798 contrary, Congress specifically provided that EPA's
2799 regulation of emissions under Section 112 must not diminish
2800 Section 111(d) requirements. Accordingly, EPA has long
2801 regulated source categories under both 111(d) and Section 112
2802 and I have provided some examples and materials attached to
2803 my testimony.

2804 In the four presidential administrations since the 1990
2805 amendments, EPA has consistently interpreted Section 111(d)
2806 to require regulation of any air pollutant not regulated
2807 under the NAAQS program on the one hand or the HAP program on
2808 the other. Opponents interpretation would effectively gut
2809 Section 111(d) undermining its function as recognized by the
2810 Supreme Court of the United States in *AEP v. Connecticut*,
2811 which is to ``provide a means''--and this is a direct quote
2812 from the decision--``to seek limits on emissions of carbon
2813 dioxide from domestic power plants.'' They ignore the Senate
2814 amendment and the fact that the House amendment itself is
2815 subject to multiple readings.

2816 Consistent with the D.C. Circuit's ruling, EPA has
2817 correctly attempted to harmonize the House and Senate

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2818 amendments to the extent they appear inconsistent. The
2819 discussion drafts compliance extension provisions are not
2820 necessary. The D.C. Circuit may stay any EPA final rule if
2821 it finds the party seeking a stay has demonstrated that it is
2822 likely to prevail on the merits, without the relief it would
2823 be irreparably harmed, the issuance of the stay would not
2824 substantially harm other parties interested in the
2825 proceedings, or on balance a stay would favor the public
2826 interest.

2827 The discussion draft would jettison this careful
2828 balancing, which has been a part of judicial tests for over
2829 50 years, in favor of what is effectively an automatic stay
2830 rule that would halt Clean Power Plan implementation for
2831 years during the pendency of any litigation without regard to
2832 the merits of the claims, the impacts to other interested
2833 parties, or the consequences for the public interest. It
2834 would also create an unprecedented escape hatch for states
2835 wholly to opt out of urgently needed carbon dioxide pollution
2836 control requirements solely on the basis of unverified claims
2837 regarding cost or purported reliability concerns.

2838 With the passage of the 1970 Clean Air Act Congress

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2839 establish national air pollution control requirements and it
2840 employed a cooperative federalism model to implement those
2841 requirements. The discussion draft's opt-out provision would
2842 break the promise backed act by the Federal Government of the
2843 Clean Air Act that states the EPA will work together to
2844 protect public health.

2845 The Clean Power Plan's flexible approach leverages
2846 states' innovation and expertise to achieve cost-effective
2847 reductions of dangerous global warming pollution. For
2848 example, Massachusetts is part of the multistate Regional
2849 Greenhouse Gas Initiative, or RGGI, which instituted a
2850 mandatory power sector cap-and-trade program since 2009.
2851 When RGGI went into effect, the RGGI states have reduced
2852 power sector carbon dioxide emissions 40 percent below 2005
2853 levels by encouraging shifts to less carbon-intensive fossil
2854 fuel generation, increasing reliance on renewables and
2855 reducing energy demands through efficiency.

2856 Regionally, in the first 3 years of the RGGI program,
2857 RGGI added \$1.6 billion to the regional economy and created
2858 thousands of new jobs in the process. As a result of RGGI,
2859 electricity consumers, including households and businesses,

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2860 enjoy a gain of over \$1 billion as their overall electricity
2861 bills drop over time.

2862 The Clean Power Plan with Massachusetts to rely on what
2863 we know works, including RGGI, to achieve the required carbon
2864 dioxide reductions, and that is good for our economy. Due in
2865 large part to our innovative energy environmental policy,
2866 clean energy is now a multibillion-dollar sector in
2867 Massachusetts supporting double digit job growth--

2868 Mr. {Whitfield.} Ms. Hoffer, I have let you go over 1
2869 minute and 20 seconds.

2870 Ms. {Hoffer.} --in 2013 to 2014. Thank you.

2871 [The prepared statement of Ms. Hoffer follows:]

2872 ***** INSERT 5 *****

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|

2873 Mr. {Whitfield.} At this time I would like to recognize
2874 the gentleman, Mr. Sunday, who is the manager of government
2875 affairs, Pennsylvania Chamber of Business and Industry, for 5
2876 minutes.

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2877 ^STATEMENT OF KEVIN SUNDAY

2878 } Mr. {Sunday.} Thank you. Chairman Whitfield, Ranking
2879 Member Rush, members of this committee, my name is Kevin
2880 Sunday, manager of government affairs for the Pennsylvania
2881 Chamber of Business and Industry. It is an honor to appear
2882 before you today to express our concerns regarding EPA's
2883 Clean Power Plan proposal and also to support Representative
2884 Whitfield with ratepayer protection legislation.

2885 As background, the Pennsylvania Chamber of Business and
2886 Industry is the largest broad-based business advocacy
2887 association in Pennsylvania and our members are of all sizes
2888 and industrial sectors. All our members need energy to
2889 survive and compete, and so do Pennsylvania citizens.

2890 Our unemployment rate in Pennsylvania is below the
2891 national average and we have made substantial and documented
2892 reductions in air pollution over the past decade. We are the
2893 second-leading state in total electricity, natural gas, and
2894 nuclear power generation, and we are fifth in coal
2895 production.

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2896 Our manufacturing sector is the eighth-largest in the
2897 Nation employing almost 600,000 people. To cite but one
2898 example about how our manufacturers need power, one of our
2899 member companies involved in processing natural gas worked
2900 with the local utility to install a dedicated local
2901 substation to give them the voltage they need to operate.
2902 Their facility, I would add, requires hundreds of local
2903 workers, many of them union tradesmen. Further, that same
2904 utility is investing in tens of millions of dollars in
2905 infrastructure in the Marcellus Shale pipe, also using union
2906 labor, to deliver the power that other drillers and
2907 manufacturers will need.

2908 But unfortunately, EPA's proposal threatens
2909 Pennsylvania's biggest competitive advantage, which is low
2910 energy prices. The significant cost of this rule by EPA's
2911 own estimation will result in relatively small reductions in
2912 global emissions of less than half of 1 percent likely soon
2913 to be eclipsed by development abroad.

2914 We have a number of questions about EPA's Clean Power
2915 Plan which I have included in greater length in my written
2916 testimony but generally here are the three key ones: Are

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2917 building blocks 1 and 2 truly realistic in a restructure
2918 generation market like Pennsylvania's? Why is 71 percent of
2919 Pennsylvania's goal based on an expectation that we mandate
2920 incredibly high amounts of renewable generation and energy
2921 efficiency requirements? And why is Pennsylvania being
2922 punished for being an early adopter of renewable generation
2923 and energy efficiency?

2924 In the Clean Power Plan Pennsylvania's renewable goal is
2925 the second-highest in the Nation, an almost 800 percent
2926 increase over current levels, and we are expected to deploy
2927 it at a faster rate than any other state. Senator Bob Casey,
2928 Jr., made a great point in his comment letter to EPA that
2929 Pennsylvania is ``second-to-last in terms of technical
2930 potential for meeting the overall needs of its own energy
2931 sector through renewable generation.'' To get to EPA's goal
2932 of 30,000 more gigawatt hours, ratepayers are going to have
2933 to fund extremely expensive solar, geothermal, or other
2934 renewable projects, something they unfortunately know all too
2935 much about.

2936 In 2004, almost a decade before EPA's 2012 baseline
2937 year, Pennsylvania passed the Alternative Energy Portfolio

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2938 Standards Act. To highlight one of the problems with this
2939 act, between 2008 and 2013, the AEPS mandates doubled from
2940 about 5.7 percent to 10.2 percent of electricity sales but
2941 the annual cost of compliance increased 54-fold. By the time
2942 we get to the peak mandate under existing law of 18 percent
2943 in 2021, the cost of electricity statewide could increase by
2944 as much as \$3.2 billion.

2945 Also ignored in the Clean Power Plan's 2012 baseline is
2946 our energy efficiency law which was passed in 2008 and to
2947 date has cost consumers \$1.7 billion to reduce their
2948 electricity consumption by 4.5 percent. Utilities and
2949 ratepayers are also expected to spend another \$735 million
2950 over the next 3 years for additional energy efficiency
2951 mandates, and all told, Pennsylvania spent the fifth-highest
2952 amount annually of any state to comply with energy efficiency
2953 mandates.

2954 I want to now highlight our experience with the
2955 Chesapeake Bay TMDL, another multibillion-dollar federal
2956 mandate that we believe is instructive in this conversation.
2957 Originally, EPA pledged flexibility but then the agency
2958 settled with environmental groups and gave Pennsylvania

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2959 regulators just 6 months to develop a federally enforceable
2960 compliance plan. Now, reminiscent of a 111(d) FIP, EPA has
2961 said that if the target reductions are not met, EPA will
2962 sanction the state and permitted facilities. There also
2963 remains the continual threat of citizen suits to ratchet up
2964 enforceability in compliance time frames.

2965 And just one final point to crystallize this at a local
2966 level, the City of Lancaster spent \$150 million in sewage
2967 improvements and millions more in green infrastructure as
2968 part of their Bay TMDL mandate. EPA hailed them as ``leading
2969 the way, a national example.'' Flash forward to this past
2970 winter, EPA is pressuring city officials to sign a new
2971 consent decree to get additional reductions at an additional
2972 cost to taxpayers for as much \$400 million.

2973 Again, thank you for your time this morning and
2974 afternoon and I look forward to answering any questions you
2975 may have.

2976 [The statement of Mr. Sunday follows:]

2977 ***** INSERT 6 *****

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|

2978 Mr. {Whitfield.} Well, thank you, Mr. Sunday.

2979 And our last witness is Mr. Paul Cicio, who is the

2980 president of the Industrial Energy Consumers of America. And

2981 you are recognized for 5 minutes. And be sure and turn it

2982 on.

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|

2983 ^STATEMENT OF PAUL CICIO

2984 } Mr. {Cicio.} Thank you, Mr. Chairman, Ranking Member
2985 Rush.

2986 The Industrial Energy Consumers of America represents
2987 energy-intensive trade-exposed companies. These companies
2988 consume 73 percent of all of the electricity in the
2989 manufacturing sector and 75 percent of the natural gas. As a
2990 result, small changes to the price of energy have relatively
2991 large impacts to our global competitiveness.

2992 As a sector, we use 40 quads of energy, and this has
2993 basically not changed in 40 years. In that same time period,
2994 the value-added output of the industrial sector has increased
2995 761 percent, a tremendous success story. The industrial
2996 sector is the only sector of the economy whose greenhouse gas
2997 emissions are 22 percent below 1973 levels. These industries
2998 are very energy efficient.

2999 IECA supports action to reduce greenhouse gas emissions
3000 so long as it will not impair our competitiveness. We must
3001 have a level playing field with global competitors. Several

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3002 countries that we compete with control electric and natural
3003 gas prices to their industrials and provide subsidies and/or
3004 practices to give them a competitive advantage. If we were
3005 the military, one would say that we are engaged in hand-to-
3006 hand combat.

3007 As proposed, the Clean Power Plan would impose
3008 significant electricity and natural gas costs and accomplish
3009 too little to reduce the threat of climate change. All costs
3010 of this unilateral action will be passed on to us the
3011 consumer and will directly impact competitiveness and jobs.

3012 The EPA cannot look at the Clean Power Plan in isolation
3013 from the significant cumulative cost that it will impose on
3014 the industrial sector either directly or indirectly through a
3015 number of recent rulemakings. Since 2000, the manufacturing
3016 sector is down 4.9 million jobs. Since 2010, manufacturing
3017 employment has increased 525,000. We are in the early stages
3018 of recovery and fear that the Clean Power Plan could threaten
3019 this recovery.

3020 In contrast, for example, China, a primary competitor
3021 has increased industrial employment by 31 percent since 2000.
3022 And U.S. manufacturing trade deficit since 2002 has grown to

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3023 \$524 billion, of which 70 percent is with China. China's
3024 industrial greenhouse gas emissions have risen over 17
3025 percent just since 2008. China produces 29 percent more
3026 manufactured goods than we do in the United States but emits
3027 317 percent more than the U.S. manufacturing sector. That is
3028 over three times as much.

3029 But despite our low greenhouse gas levels, the EPA will
3030 increase our costs and make it easier for China's carbon-
3031 intensive product to be imported, which means the Clean Power
3032 Plan would be directly responsible for increasing global
3033 greenhouse gas emissions.

3034 There are consequences to increasing energy costs on the
3035 industry sector and it is called greenhouse gas leakage. And
3036 the EPA so far has failed to address its impact and has thus
3037 underestimated the cost. For example, when a state's
3038 electricity costs rise due to the Clean Power Plan, these
3039 industries with multiple manufacturing locations will shift
3040 production and shift their jobs to low-cost electricity
3041 states, along with the greenhouse gas emissions, creating
3042 state winners and losers. When they do, it will increase the
3043 price of electricity to the remaining ratepayers in that

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3044 state.

3045 If these industries still cannot be competitive, they
3046 move offshore, moving jobs and greenhouse gas emissions,
3047 accomplishing nothing environmentally. One needs to only
3048 look towards California that has high electricity costs since
3049 AB 32. To our knowledge there is not a single energy-
3050 intensive trade-exposed company that has built a new facility
3051 there. Instead, California is importing manufacturing
3052 product, they are forfeiting jobs, increasing global
3053 greenhouse gas emissions. And the same is true for the EU
3054 ETS. It is for this reason that we urge policymakers to hold
3055 offshore manufacturing competitors to the same carbon
3056 standard as domestic manufacturers.

3057 Thank you.

3058 [The prepared statement of Mr. Cicio follows:]

3059 ***** INSERT 7 *****

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|

3060 Mr. {Whitfield.} Thank you, Mr. Cicio. And thank all
3061 of you again for your comments.

3062 And I would like to recognize myself for 5 minutes of
3063 questions.

3064 These hearings are always so interesting because when
3065 you listen to the testimony, it raises so many questions in
3066 your mind, and sometimes you even question your sanity in
3067 some ways.

3068 But I was listening to Ms. Hoffer and she was so
3069 emphatic in her legal defense of the 111(d) regulation, for
3070 example, and I know, Mr. Trisko, that you are an accomplished
3071 Clean Air Act lawyer as well. And in my opening comments I
3072 talked a little bit about--I am not an expert in the Clean
3073 Air Act but, as far as I know, in this proposed rule they
3074 basically view a state as a source because there is a number,
3075 a cap for that source, and so to comply with the regulation,
3076 as they say, to get states the flexibility to go outside the
3077 fence to address it. Would you agree with me that this is an
3078 unusual interpretation and legal analysis by EPA to decide
3079 that it gives them the authority to do this regulation?

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3080 Mr. {Trisko.} Absolutely, Mr. Chairman. Now, Professor
3081 Tribe has discussed these issues at some length both in his
3082 testimony and in his written commentary on the rule.

3083 There is another aspect of 111(d) relating to the term
3084 ``standard of performance'' that I believe is extremely
3085 problematic for EPA's attempt to bring in energy efficiency
3086 outside-the-fence measures and renewable energy requirements
3087 also outside the fence that call into question the basic
3088 legal soundness of the EPA's approach.

3089 When you look at the fundamental architecture of the
3090 Clean Air Act with its scheme of regulation for criteria
3091 pollutants on the one hand, regulated largely under Titles I,
3092 II, and IV, and hazardous air pollutants such as mercury on
3093 the other hand, I think it makes perfect sense that in this
3094 instance sources that already are subject to a MACT
3095 requirement under Section 112 be exempt from Section 111(d)
3096 requirements because exposing them to 111(d) would in effect
3097 create a form of double regulation.

3098 Moreover, had Congress intended the last time it visited
3099 the Clean Air Act in 1990 to include CO2 regulation as a
3100 possibility under Section 111(d), I would note that CO2 was

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3101 addressed explicitly in the context of regulation of
3102 automotive tailpipe emissions in an amendment proposed in the
3103 Senate by Senators Worth and Heinz. The Senate rejected that
3104 amendment indicating that CO2 emissions--

3105 Mr. {Whitfield.} Absolutely.

3106 Mr. {Trisko.} --should not be regulated--

3107 Mr. {Whitfield.} --you are exactly right and I
3108 appreciate your making that comment.

3109 I might say also, Ms. Hoffer was talking about great
3110 progress that is being made in Massachusetts, and I
3111 understand how--and by the way, it exemplifies why some
3112 states get so upset about what is going on here. In your
3113 view, Massachusetts has been progressive and have really
3114 tried to address the issue. And one of the consequences of
3115 that is that Massachusetts has the third-highest electricity
3116 rates in the country per kilowatt hour, and between 2014,
3117 2015 went up about \$3 per kilowatt hour. And that is a
3118 decision that they have made. But other states have decided
3119 that they don't want to pursue that right now.

3120 And the impact of this is on those people you talked
3121 about this, Mr. Trisko, that one-half of the household in the

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3122 31 states that you all looked at, 38 million households,
3123 their median income is \$23,000. And so when you talk about
3124 upping electricity rates on these people who have no other
3125 choice, it is a dramatic impact on them.

3126 And I didn't have an opportunity to get go into it, Ms.
3127 Johnson, but I read your article. Here you have got one of
3128 the cleanest coal plants in America operating, you have spent
3129 \$500 million on it, it has a useful life up through 2045 and
3130 you are probably going to be forced to close it down. Is
3131 that correct?

3132 Ms. {Johnson.} That is correct, Mr. Chairman.

3133 Mr. {Whitfield.} I mean it is unbelievable.

3134 My time is expired.

3135 Mr. Rush, you are recognized for 5 minutes of questions.

3136 Mr. {Rush.} Yes, Ms. Hoffer, you have been the target
3137 of some pretty stringent remarks by the chairman and I just
3138 want to give you an opportunity to respond. So what is your
3139 reaction to some of the remarks concerning your fine state
3140 and what you are doing in Massachusetts and the cost of
3141 energy or electricity in your state? Do you want to respond?

3142 Ms. {Hoffer.} I will briefly respond to Mr. Trisko's

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3143 point. Since 1977, in fact EPA has regulated the same
3144 sources under both 111(d) and 112 I just want to quickly give
3145 you the examples of those. So there is the regulation of
3146 landfills under Section 111(d) for methane and non-methane
3147 organic compounds and under Section 12 for vinyl chloride
3148 ethylbenzene, toluene, and benzene. Then there is also
3149 regulating fluorides from phosphate fertilizer plants under
3150 Section 111(d) and regulating hydrogen fluoride and other
3151 pollutants under Section 112. So this is a, you know, long-
3152 standing practice of EPA.

3153 And on the cost point, there is a couple things I would
3154 like to add. So with the Regional Greenhouse Gas Initiative,
3155 or RGGI, most of the states had to pass implementing
3156 legislation to put the RGGI program into work, and many of
3157 the participating states decided to take the allowance
3158 auction proceeds so the amount of money that is paid for an
3159 allowance to emit one ton of carbon dioxide and use that to
3160 promote energy efficiency.

3161 So Massachusetts has been ranked in, you know, first or
3162 among the first states for energy efficiency in the country
3163 for the past couple of years because we have been able

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3164 effectively to take that money and invest it back into energy
3165 efficiency in our state, which over time has had the effect
3166 of lower electric bills. And we had this exchange earlier
3167 today about electricity rates versus electricity bills, and
3168 for those of you who live in states where the electricity
3169 markets have been deregulated, you know when you get your
3170 energy bill there is a couple different charges on it. There
3171 is the charge for the electricity itself, there is often a
3172 distribution charge, which is for your local wires and the,
3173 you know, ability of the distribution companies to deliver
3174 service to you, and then there is a transmission charge. And
3175 what you see over time with efficiency improvements is that
3176 the total bill comes down.

3177 And that is what you really want to focus on with this.
3178 And I think we can hear more from other witnesses on the
3179 panel today as well, but huge beneficiaries of the energy
3180 efficiency under RGGI have been the industrial ratepayers,
3181 and that has been a real plus for Massachusetts.

3182 Mr. {Rush.} I want to thank you.

3183 Dr. Tierney, according to the National Climate
3184 Assessment, if we do not seriously invest in addressing

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3185 climate change impacts now, we can expect to see more
3186 expensive and costly future damages affecting almost every
3187 facet of our society from negative health impacts to stress
3188 on our infrastructure and water systems to harming our
3189 national security up to and including hurting our overall
3190 economic growth. In your professional opinion, do you
3191 believe that the proposed CPP is both flexible and provides
3192 states with feasible deadlines so as to not drastically
3193 impact reliability and/or costs for consumers? And also why
3194 is it so vital that we act now rather than down the road?

3195 Ms. {Tierney.} Thank you very much for that question.
3196 As a co-lead author of the Energy Production and Use chapter
3197 of the National Climate Assessment, we took a survey of the
3198 literature on the costly impacts already being faced by
3199 Americans associated with the effects of climate change.
3200 Florida, for example, faces tremendous costs of a variety of
3201 sorts, and California, I think of California and the well-
3202 known costly drought conditions are extraordinary in terms of
3203 their cost on consumers.

3204 One of the things that is valuable to think about as we
3205 think about this Clean Power Plan, right now, we have the

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3206 ability for people who are using fossil fuels to produce
3207 electricity are polluting for free with regard to carbon. No
3208 wonder it is cheap to do that because you are really dumping
3209 some kind of cost on somebody else. And as a result of that,
3210 the Clean Power Plan provides a lot of flexibility for states
3211 to figure out how to address that problem quite creatively.
3212 I think of a state like Florida which indeed hangs as a
3213 separate part of the electric system. Florida has the
3214 ability to establish some kind of mutual assistance program
3215 with other states, enabling the two states to have more
3216 affordable compliance programs for both of them.

3217 Mr. {Whitfield.} The gentleman's time is expired.

3218 At this time I recognize the gentleman from Texas, Mr.
3219 Olson, for 5 minutes.

3220 Mr. {Olson.} I thank the chairman.

3221 Welcome, Mr. Trisko, Ms. Johnson, Ms. Tierney, Ms.
3222 Hoffer, Mr. Sunday, Mr. Cicio. Long day, I know that, but
3223 thank you for coming this afternoon.

3224 My first question would be for Mr. Trisko and Ms.
3225 Johnson. And in your testimony, sir, you talked about how
3226 our seniors may be hit the hardest by increases in

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3227 electricity prices. And you also say they may have the
3228 lowest ability to absorb these costs with their energy
3229 demands. And my mother-in-law, my kids call her Mamie, is
3230 case in point. She moved from cool, dry, Southern California
3231 to hot, humid southeast Texas 3 years ago. She is on a fixed
3232 income. Energy is one of her biggest expenses, air-
3233 conditioning. If she has some increase in prices because of
3234 this rule, she might not have the quality of life she has
3235 currently because her prices will go up. She might not be
3236 able to keep that air-conditioner where she wants it and I
3237 don't want that to happen to her. So could you elaborate on
3238 the issues seniors face across America, sir?

3239 Mr. {Trisko.} I am happy to, Congressman. I think it
3240 is important to bear in mind when looking at the electricity
3241 price increases that I cite in my testimony to bear in mind
3242 that the NERA analysis, and I have used the most conservative
3243 NERA numbers in this report, including all four EPA building
3244 blocks, but the NERA analysis included in its baseline the
3245 rate increases associated with the EPA mercury rule, the MATS
3246 rule, and that compliance is beginning now and will continue
3247 over the next several years. There will be significant

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3248 increases in electricity prices as a consequence of the
3249 compliance with the MATS rule. So these numbers are additive
3250 on top of an increasing trend.

3251 The impact on fixed-income seniors is fairly obvious
3252 because most of the fixed-income seniors fall into the lower-
3253 income categories either below 50,000 or in many cases below
3254 \$30,000 a year. You are basically looking at Social Security
3255 recipients receiving at best COLA increases, which barely
3256 keep pace with the rate of inflation.

3257 So if your electric bill goes up by let's say 15 to 20
3258 percent in real terms compared to what it is today as a
3259 consequence of--

3260 Mr. {Olson.} Like my Mamie, like my mother-in-law, yes,
3261 sir.

3262 Mr. {Trisko.} Well, as a consequence to these
3263 regulations, you are for those individuals really creating a
3264 question of heating versus eating, and there is survey
3265 evidence that bears that out.

3266 Mr. {Olson.} Ms. Johnson with Florida, large senior
3267 population, how does that impact your seniors back home in
3268 Florida?

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3269 Ms. {Johnson.} Very similar situation, Congressman.
3270 Thank you for the question. As I mentioned, a third of our
3271 population that we serve have incomes below the poverty
3272 level, and over 75 percent of them have incomes below 75,000,
3273 although that is not poverty-level income. That is in the
3274 lower to mid-bracket of incomes. And as Mr. Trisko mentioned
3275 and I agree, those lower-income households spend more money
3276 on their electricity service per month. If you increase
3277 their bills, if you increase the rate that they pay, even if
3278 you are trying to work with them to decrease the amount of
3279 electricity that they use, they will disproportionately be
3280 impacted negatively by an increase.

3281 Mr. {Olson.} And this is number two because seniors
3282 feel heat more than normal people. They want the air colder.
3283 My mother-in-law keeps it really cold because that is what
3284 she is used to and her body has told her that she can't take
3285 that extreme heat. So thank you for your respects.

3286 My final question is for you, Mr. Sunday. You mentioned
3287 in your testimony that Pennsylvania has a competitive
3288 advantage because of low energy prices. I mean it sounds
3289 like jobs are coming to Pennsylvania, not flocking there.

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3290 And as you know, the steel industry went away to Asia about a
3291 decade ago, so how will these increased prices from this rule
3292 impact your ability to recover and thrive in Pennsylvania?

3293 Mr. {Sunday.} We are on the verge of a manufacturing
3294 renaissance and frankly we cannot afford higher energy
3295 prices. I mentioned the energy efficiency laws. To the
3296 point of steel, the Industrial Energy Consumers of
3297 Pennsylvania gave us some data that the state's standing
3298 energy efficiency laws in some utility jurisdictions add
3299 \$40,000 a month to their bills. That is quite a few
3300 employees that they can hire a year.

3301 We stand on the precipice of turning things around in
3302 Pennsylvania but, you know, we don't want to turn back now.

3303 Mr. {Olson.} Mr. Cicio, you mentioned jobs coming back
3304 to America. How about jobs leaving if this rule goes into
3305 effect? How many jobs will fly overseas again?

3306 Mr. {Cicio.} Well, we don't know exactly how many jobs
3307 because we won't know that until we find out what the final
3308 rule is.

3309 But let's talk practical terms here. Let's just look at
3310 two industries that use a lot of electricity: steel and

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3311 aluminum. The percent of electricity of operating costs of
3312 aluminum is about 30 percent of the cost. Relatively small
3313 changes has a huge impact on whether they produce here or
3314 produce somewhere in the world. Steel is about 20 to 25
3315 percent. So you can see that high operating cost has a huge
3316 sensitivity to price change.

3317 Mr. {Olson.} Thank you. I yield back.

3318 Mr. {Whitfield.} Thank you. At this time I recognize
3319 the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

3320 Mr. {Pallone.} Thank you, Mr. Chairman.

3321 I know everyone is concerned about rates and
3322 reliability, so, Ms. Tierney, I wanted to ask you a little
3323 bit about rates. It appears to me that the EPA analysis
3324 shows some increases of electricity rates but it also shows
3325 that by the end of the compliance period electricity bills
3326 are expected to be lower. So, first, why bills would be
3327 lower at the end of the program, and second, for the
3328 projected rate increases, how do they compare to rate
3329 increases that we have already seen over time?

3330 Ms. {Tierney.} Thank you, Congressman Pallone.

3331 One of the reasons why EPA projects that there will be

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3332 lower electricity bills is the point that has been described
3333 previously. If you are using less electricity because of
3334 energy efficiency, you are buying fewer units of electricity.
3335 Even though the unit price of electricity might rise in a
3336 small percentage, your total bill in terms of the quantity
3337 you use and the price, that is going to lead to a lower cost
3338 impact.

3339 My colleague here from Massachusetts has just reported
3340 that one of the things we have observed in the Northeast and
3341 mid-Atlantic states is those strong investments in energy
3342 efficiency get you two bangs for bucks. It means that there
3343 are a lot of jobs locally in the local economy to put on
3344 insulation in a variety of things. The consumer ends up
3345 using electricity and then over time you don't have to run
3346 the most expensive power plants on the system to produce
3347 electricity, and it is a virtuous cycle in that regard. So
3348 that is the reason why the EPA's logic there is there will be
3349 lowered bills over time.

3350 Mr. {Pallone.} Can I ask you, are there larger forces
3351 in the Clean Power Plan at work with regard to increased
3352 rates? Is the power system already undergoing change for

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3353 reasons unrelated to the Clean Power Plan?

3354 Ms. {Tierney.} Absolutely. Since the shale gas
3355 revolution began to lower the price of a domestic fossil
3356 fuel, that has put pressure on existing aged inefficient
3357 coal-fired power plants. We have seen reductions in those
3358 coal-fired power plants in terms of their operations. We
3359 have seen no reliability problems associated with that. And
3360 in fact, we see today the announced retirements of coal
3361 plants around the country are being flanked on the other side
3362 with an equal amount of proposals for new gas-fired power
3363 plants, new renewable infrastructure, new transmission, new
3364 gas pipeline infrastructure. As a result of that, we are
3365 seeing the market respond very favorably to the signals about
3366 lowering supply.

3367 Mr. {Pallone.} Well, in the same vein that you recently
3368 took a look at the impact of the Clean Power Plan on electric
3369 systems reliability. Do these doomsday claims have any
3370 merit?

3371 Ms. {Tierney.} They don't in my opinion. The doomsday
3372 scenario is helpful to all of us because here we are talking
3373 about it. It does not suggest that everybody will stand by.

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3374 I have never seen the mission-oriented electric industry
3375 stand by when it has to face a new reliability issue. They
3376 will do that now. States are very responsible for this so I
3377 think that the worst-case scenario, gloomy outlook is one
3378 that we won't see happen.

3379 Mr. {Pallone.} Thank you.

3380 Ms. Hoffer, Massachusetts has come out in support of the
3381 EPA's proposed Clean Power Plan and it is clear from your
3382 testimony that EPA has the legal authority for the plan.
3383 Could you briefly comment on the logic of legal challenges to
3384 a proposed rule? How about legislation that seeks to halt,
3385 alter, or undermine a proposed rule? I would say that
3386 challenging a proposed rule either in the course of this
3387 legislation is a bit premature but what do you think?

3388 Ms. {Hoffer.} It is absolutely premature and there is
3389 no need for it. And in fact, as Administrator McCabe said
3390 earlier, it would be extremely disruptive. Climate change is
3391 an existential threat to humanity, and there is a significant
3392 cost associated to that, which affects all sectors of the
3393 economy. So one way to think about it is it isn't the status
3394 quo compared to doing the Clean Power Plan, but increasingly

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3395 expensive climate response costs compared to doing something
3396 now, which is already a bit late to reduce and abate the
3397 threat.

3398 EPA has estimated that climate and weather disasters
3399 have affected the American economy to the tune of over \$100
3400 million since 2012 alone, so we need to be doing things as
3401 quickly as possible and there is already a rational legal
3402 limitation. If, for example, as I explained earlier, a
3403 moving party came into the court and wanted to challenge the
3404 final rule and was able to make out a case that the rule
3405 should be stayed during the pendency of that challenge based
3406 on the traditional standards that courts typically apply for
3407 a stay, a stay would be granted. So we already have a way
3408 and a legal mechanism that is well recognized that could be
3409 applied in this instance so it is not necessary.

3410 Mr. {Pallone.} Thank you, Mr. Chairman.

3411 Mr. {Whitfield.} The gentleman's time is expired.

3412 We have two votes on the House Floor. I believe we are
3413 going to be able to finish our questions before we go, so at
3414 this time I would recognize the gentleman from West Virginia,
3415 Mr. McKinley, for 5 minutes.

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3416 Mr. {McKinley.} Thank you. I will try to be brief,
3417 very quick on this.

3418 The statements earlier today by Ms. McCabe that the
3419 increased cost of about \$8.5 billion is going to lead to
3420 lower utility bills I found fairly incredible. And it is
3421 just further manifestation I think of this disturbing trend
3422 coming from the administration over the years and calls into
3423 question I think their credibility.

3424 Look back on some of the statements that we have dealt
3425 with. Al Qaeda is on the run in 2012. 2014 we heard Yemen
3426 is a counterterrorism success story and we found that to be
3427 false as well. We heard over the years that the more EPA
3428 regulations create jobs. For every million dollars in
3429 regulations, it creates 1-1/2 jobs. We are hearing about
3430 this proposed Iranian deal is good for Israel but the Prime
3431 Minister says absolutely that is false. Now I am hearing
3432 this is going to save money for the consumer.

3433 So, Mr. Trisko, can you respond to that? I just thought
3434 that was an outrageous statement and really called into
3435 question a lot of the credibility.

3436 Mr. {Trisko.} Congressman, yes, thank you. The reason

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3437 that EPA has presented such a low estimate of the annual
3438 compliance costs with the Clean Power Plan is that it has
3439 netted out from those costs the assumed savings from energy
3440 efficiency initiatives. Now, NERA's analysis using the four
3441 building blocks of the EPA rule, and this is the cost to
3442 consumers of investments in energy efficiency to meet EPA
3443 targets, indicates a cost to consumers, and this is in net
3444 present value terms, of \$560 billion. That means Americans
3445 will be asked by this rule, American consumers will be asked
3446 to spend \$560 billion in investments in energy efficiency.

3447 Congressman, I believe that estimate of that extent of
3448 energy efficiency investment is simply fatuous. As of just a
3449 few years ago the most recent data--and these don't change
3450 very quickly--the average American house is owned for a
3451 period of 7 to 8 years. You cannot recover a major
3452 investment such as in replacing sliding glass doors or an
3453 HVAC, a heat pump system, you cannot recover those costs in
3454 the space of 7 to 8 years. You can do relatively simple
3455 things like attic insulation and weather-stripping and that
3456 sort of thing, but those don't get you close to the targets
3457 that EPA is advocating for states in this rule.

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3458 So if you are going to have energy efficiency to the
3459 extent that EPA is advocating it, consumers ought to be able
3460 to shell out on the order of a half a trillion dollars to pay
3461 for it.

3462 Mr. {Pallone.} I yield back the balance of my time to
3463 help out.

3464 Mr. {Whitfield.} The gentleman yields back.

3465 At this time I recognize the gentleman from Virginia,
3466 Mr. Griffith, for 5 minutes.

3467 Mr. {Griffith.} Thank you very much.

3468 Ms. Hoffer, we are just going to disagree on the law.
3469 Mr. Trisko, you and I are going to agree on the law as to
3470 whether or not the EPA has authority under 111(d). But I
3471 would submit to both of you that in this case on Thursday of
3472 this week the EPA is going to argue in front of the U.S.
3473 Court of Appeals for the D.C. Circuit that it is premature to
3474 take the question up as to whether or not they have authority
3475 under 111(d).

3476 Now, there are some other arguments as well, but at the
3477 very least it would seem to me in the matter of efficiency
3478 settling this issue more quickly as to whether or not there

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3479 is even authority to go forward with the regulations would be
3480 in the interest of the American public. Mr. Trisko, would
3481 you not agree with that, that the EPA ought to say, okay, at
3482 least asked to whether or not we have authority since we are
3483 already regulated under 112, can the court rule on that so we
3484 can move forward to the Supreme Court? Because we all know
3485 that issue is going to end up in the Supreme Court, wouldn't
3486 you agree?

3487 Mr. {Trisko.} Congressman, I would agree. And let me
3488 cite another precedent that is occurring in the here and now.
3489 The Supreme Court will hear arguments and render a decision
3490 in the challenge to EPA's mercury rule. There are power
3491 plants that are being retired, basically being put into
3492 stranded asset category today, this month, this year, tens of
3493 thousands of megawatts of capacity. The Supreme Court could
3494 vacate the EPA mercury rule. In that event, wouldn't it have
3495 made sense before those plants were retired and rendered
3496 stranded assets--

3497 Mr. {Griffith.} And those jobs lost.

3498 Mr. {Trisko.} --to have the answer?

3499 Mr. {Griffith.} Yes, sir.

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3500 Mr. {Trisko.} To have the answer.

3501 Mr. {Griffith.} And that screams out for this proposed
3502 draft to be passed, wouldn't you agree?

3503 Mr. {Trisko.} Yes, sir.

3504 Mr. {Griffith.} All right. And, Ms. Johnson, likewise,
3505 you would feel that you are about to have some stranded
3506 cross. Wouldn't you like to know in advance that the EPA at
3507 least has the authority to promulgate these regulations? You
3508 might still be opposed to them, but wouldn't you like to know
3509 whether they have the authority before you are forced to shut
3510 down that facility?

3511 Ms. {Johnson.} I certainly would, Congressman.

3512 Mr. {Griffith.} And that screams for this piece of
3513 legislation, this draft legislation to be passed, wouldn't
3514 you agree?

3515 Ms. {Johnson.} Yes, I agree.

3516 Mr. {Griffith.} And you would agree then with the State
3517 Corporation Commission of Virginia when they said that
3518 because of stranded costs in part but contrary to the claim
3519 that rates will go up but bills will go down, experience of
3520 cost in Virginia make it extremely unlikely that either

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3521 electric rates or bills in Virginia will go down as a result
3522 of the proposed regulation. You certainly have no reason to
3523 disagree in Virginia and for the people that you serve in
3524 your area would that also be true?

3525 Ms. {Johnson.} I believe that is true. I don't know
3526 how you could retire a plant prematurely when there is
3527 valuable life left in it and have to replace new generation
3528 to take that up and pay for it twice and not have the costs
3529 go up.

3530 Mr. {Griffith.} Yes, ma'am.

3531 And, Mr. Cicio, one of the things I wanted to ask you
3532 about if I heard your testimony correctly, the Chinese
3533 produce how much more product today than we do
3534 percentagewise?

3535 Mr. {Cicio.} I believe it is 23 percent.

3536 Mr. {Griffith.} About 20 some percent and yet their
3537 carbon footprint is how much more for that production?

3538 Mr. {Cicio.} Three hundred percent more.

3539 Mr. {Griffith.} So when we make it difficult for
3540 businesses like Mr. Sunday's businesses to do business in
3541 Virginia, United States, Pennsylvania for Mr. Sunday's case,

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3542 we send some of those jobs--not all them but some of them
3543 will go to places like China or India, isn't that correct?

3544 Mr. {Cicio.} That is correct. Turn it around. Look at
3545 it this way. If you create jobs in the United States and you
3546 don't import from China, you are reducing global emissions.

3547 Mr. {Griffith.} So this may actually have a contrary
3548 effect on the environment where everybody is claiming that
3549 this will help the environment by pushing jobs to places like
3550 China, Vietnam, India, wherever--

3551 Mr. {Cicio.} That is correct.

3552 Mr. {Griffith.} --we could be making the environment
3553 worse. And I note that India has said they are not planning
3554 on cutting back on carbon. They are going to use more
3555 carbon, they are going to use more coal because it is
3556 affordable to produce the energy, to produce jobs and they
3557 want to catch up with the U.S. and China, isn't that correct?

3558 Mr. {Cicio.} That is correct. And even Japan just last
3559 week announced they will build 40 coal-fired power plants so
3560 it is not just developing countries.

3561 Mr. {Griffith.} And the Germans as well are building
3562 some more coal plants. And of course one of the things that

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3563 people often forget because they will say that we are the--I
3564 think somebody earlier tonight said we are, you know, second
3565 only to China in carbon footprint. We are the world's third
3566 largest or most populous country, we are the world's largest
3567 economy, and we are currently producing the second-most
3568 products, so that accounts for some of this and we have
3569 benefited the rest of the world with our innovations. We can
3570 benefit them now with our innovations without the force of
3571 government regulation, particularly this particular
3572 regulation we are discussing today, the Clean Power Plan, by
3573 moving forward to make us better and more efficient in the
3574 factories as opposed to debilitating folks like in my
3575 district who don't have the money to spend on these increased
3576 electricity.

3577 Thank you so much. I yield back.

3578 Mr. {Whitfield.} Thank you. Mr. Rush?

3579 Mr. {Rush.} Mr. Chairman, I ask unanimous consent to
3580 enter a number of letters into the record from various
3581 organizations, public health organizations, environmental
3582 public interests, environmental justice organizations, and
3583 consumer groups. So I ask unanimous consent that these

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3584 letters be entered into the record.

3585 Mr. {Whitfield.} Without objection.

3586 [The information follows:]

3587 ***** COMMITTEE INSERT *****

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|

3588 Mr. {Whitfield.} And then I would like to submit for
3589 the record by unanimous consent the comments that were
3590 submitted to EPA regarding its proposed 111(d) rule by the
3591 National Black Chamber of Commerce, the United States
3592 Hispanic Chamber of Commerce, and National Association of
3593 Realtors, and would also like to submit a statement in
3594 support of the Ratepayer Protection Act by the National
3595 Association of Homebuilders.

3596 [The information follows:]

3597 ***** COMMITTEE INSERT *****

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|

3598 Mr. {Whitfield.} So that concludes our hearing. You
3599 all were very patient. Thank you very much for taking time
3600 to focus on this important issue. We look forward to working
3601 with all of you as we move forward. We will keep the record
3602 open for 10 days.

3603 And that will conclude today's hearing. Thank you very
3604 much.

3605 [Whereupon, at 1:20 p.m., the Subcommittee was
3606 adjourned.]