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## KEY POINTS ON EPA CARBON REGULATIONS

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The Obama Administration is attempting to impose new regulations that will require reductions in carbon dioxide (CO<sub>2</sub>) emissions from existing coal, oil, and natural gas-fired power plants. EPA's proposed "Clean Power Plan," if finalized, will use Section 111(d) of the Clean Air Act to impose a regulatory framework on states that will transform how electricity is generated, transmitted, distributed, and used. This proposal threatens to eliminate the critical competitive advantage that affordable and reliable electricity provides to the American economy, and would take away the authority of states to set their own energy policies.

Specific concerns and problems with EPA's 111(d) proposal include:

### **Legal Problems.**

- The Clean Air Act does not allow EPA to regulate greenhouse gas (GHG) emissions from existing coal-fired power plants under Section 111(d) because these same coal-fired power plants are already regulated by EPA under Section 112 of the Clean Air Act. Recently, twelve states filed suit to stop EPA's proposal for this very reason, and Attorneys General from nine states filed an amicus brief in another case, saying that the proposal "violates ... the literal terms of the Clean Air Act."<sup>1</sup>
- Even if EPA believes it has the basic authority to regulate, Section 111(d) allows EPA to set emission standards based *solely* on emission reductions that can be achieved "inside the fence" at power plants. However, this proposal requires substantial reductions "outside the fence", or at places and with entities separate and apart from the emissions purportedly subject to regulation. Last year, before the proposal was issued, Attorneys General from 17 states warned EPA that the agency does not have authority to require emission reductions outside the fence.<sup>2</sup>

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<sup>1</sup> See *State of West Virginia, et.al., v. United States Environmental Protection Agency*, D.C. Circuit, and *In Re: Murray Energy Corporation, Brief of the States of West Virginia, Alabama, Alaska, Kentucky, Nebraska, Ohio, Oklahoma, South Carolina, and Wyoming as Amici Curiae in Support of the Petitioner*, June 25, 2014.

<sup>2</sup> *Perspective of 18 States on Greenhouse Gas Emission Performance Standards for Existing Sources under § 111(d) of the Clean Air Act*, September 11, 2013.



## **Economic Impacts.**

- EPA's carbon regulations could cause serious harm to the U.S economy, raising energy prices and costing jobs. Independent studies and analyses are being conducted, but EPA's own estimates project that its rule will cause nationwide **electricity price increases averaging between 6 and 7 percent in 2020, and up to 12 percent in some locations.**<sup>3</sup> EPA estimates annual compliance costs between \$5.4 and \$7.4 billion in 2020, rising up to \$8.8 billion in 2030. These are power sector compliance costs only, and do not capture the subsequent spillover impacts of higher electricity rates on overall economic activity.
- The United Mine Workers of America has estimated that the rule will result in **187,000 direct and indirect job losses** in the utility, rail, and coal industries in 2020, and cumulative wage and benefit losses from these sectors of **\$208 billion** between 2015 and 2035.<sup>4</sup>
- Higher energy prices disproportionately harm low-income and middle-income families. **Since 2001, energy costs for middle-income and lower-income families have increased by 27 percent,** while their incomes have declined by 22 percent.<sup>5</sup> EPA's rule will only exacerbate this trend.
- In late July, the Center for Strategic and International Studies (CSIS) released a preliminary analysis of the EPA proposal.<sup>6</sup> This analysis found that the EPA proposal could result in:
  - Nationwide costs of up to \$32 billion per year; and
  - Average electricity rate increases of up to 9.9 percent per year.
- The Wall Street Journal called EPA's rule a "*huge indirect tax and wealth redistribution scheme that the EPA is imposing by fiat [that] will profoundly touch every American.*"<sup>7</sup> The paper further noted that "*it is impossible to raise the price of carbon energy without also raising costs across the economy. The costs will ultimately flow to consumers and businesses.*"

<sup>3</sup> EPA, *Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants*, June 2014, available at <http://www2.epa.gov/sites/production/files/2014-06/documents/20140602ria-clean-power-plan.pdf>

<sup>4</sup> <http://environmental.pasenategop.com/files/2014/06/Trisko-Testimony.pdf>

<sup>5</sup> [http://americaspower.org/sites/default/files/Trisko\\_2014\\_1.pdf](http://americaspower.org/sites/default/files/Trisko_2014_1.pdf)

<sup>6</sup> Rhodium Group and Center for Strategic and International Studies, *Remaking American Power: Preliminary Results*, July 24, 2014.

<sup>7</sup> <http://online.wsj.com/articles/carbon-income-inequality-1401752504>



## **Electric Reliability.**

- Nationwide, EPA projects that its Clean Power Plan proposal will cause up to 49,000 megawatts (MW) of additional coal-fired electric generating capacity to retire by 2020, in addition to the approximately 66,000 MW that will retire by 2020 due to other EPA regulations and other causes. In total, EPA projects that approximately 115,000 MW of coal capacity will retire by 2020, representing nearly 40 percent of existing coal generation and over 10 percent of all existing electric generating capacity.<sup>8</sup>
- The CSIS study found that EPA's proposal would cause approximately 75,000 MW of additional coal retirements, for a total of 141,000 MW of coal retirements.<sup>9</sup>
- Even prior to the release of EPA's carbon rules, many experts voiced concern that coal plant shutdowns driven by EPA regulations present a serious threat to electric reliability. Federal Energy Regulatory Commission (FERC) member Philip Moeller has warned, "I'll be shocked that if a year from now, people aren't getting almost panicked about the prospect of what the grid is gonna look like in the summer of '15, and particularly in the summer of '16, as we see this massive shutdown of coal plants."<sup>10</sup>
- The additional retirements forced by EPA's carbon rules will only exacerbate reliability risks and the potential for brownouts and blackouts. **Comprehensive and independent reliability analyses must be undertaken** by expert organizations such as the Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) and fully considered by EPA before re-proposing any replacement rule to limit power plant carbon dioxide emissions.

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<sup>8</sup> EPA, *Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants*, June 2014; EIA, *Electric Power Monthly*.

<sup>9</sup> Rhodium Group and Center for Strategic and International Studies, *Remaking American Power: Preliminary Results*, July 24, 2014.

<sup>10</sup> <http://www.eenews.net/energywire/stories/1059993460>



## **Global Context and Failure of EPA Rule to Address Climate Change.**

- EPA's regulations will impose billions in costs on the U.S. economy but fail to meaningfully reduce CO<sub>2</sub> emissions on a global scale. For example, the projected CO<sub>2</sub> emission reduction from EPA's proposed rule is, at most, 555 million metric tons (mmt) in 2030, which represents only 1.3 percent of projected global CO<sub>2</sub> emissions in that year.<sup>11</sup> This reduction in 2030 **would offset the equivalent of just 13.5 days of CO<sub>2</sub> emissions from China.**<sup>12</sup>
- The U.S. has led the world in reducing CO<sub>2</sub> emissions. **Since 2005, U.S. emissions have fallen by 13 percent while China's have grown by 69 percent and India's by 53 percent.**<sup>13</sup> International emissions will only continue to grow rapidly—between 2011 and 2030, CO<sub>2</sub> emissions from non-OECD nations are projected to grow by nine billion tons per year.<sup>14</sup> In other words, for every ton of CO<sub>2</sub> reduced in 2030 as a result of EPA's rule, the rest of the world will have increased emissions by more than 16 tons.
- Other developed nations that have implemented similar policies are now rolling them back. In July, Australia voted to repeal its carbon tax. The tax imposed average energy bill increases of \$550 on Australian families.<sup>15</sup>
- Japan is increasing its coal generation as a result of the Fukushima disaster and the affordability of coal. Germany is proceeding to build ten more coal fired power plants to replace closing nuclear units. The Netherlands is increasing its coal generation with three new coal plants scheduled to be completed in the near term. The Ukraine has plans to build approximately 14 new coal-fired plants to replace imported natural gas from Russia.<sup>16</sup>
- Because U.S. businesses compete on a global scale, the electricity and related price increases resulting from EPA's rule will severely disadvantage energy intensive,

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<sup>11</sup> EPA, *Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants*, June 2014; EIA, *International Energy Outlook 2013* (projecting global emissions of 41, 464 mmt in 2030).

<sup>12</sup> The Energy Information Administration projects that China will emit more than 14 billion tonnes of CO<sub>2</sub> in 2030. Source: <http://www.eia.gov/forecasts/ieo/table21.cfm>

<sup>13</sup> Trends in Global CO<sub>2</sub> Emissions 2013 report, available at [http://edgar.jrc.ec.europa.eu/news\\_docs/pbl-2013-trends-in-global-co2-emissions-2013-report-1148.pdf](http://edgar.jrc.ec.europa.eu/news_docs/pbl-2013-trends-in-global-co2-emissions-2013-report-1148.pdf), Table 2.2.

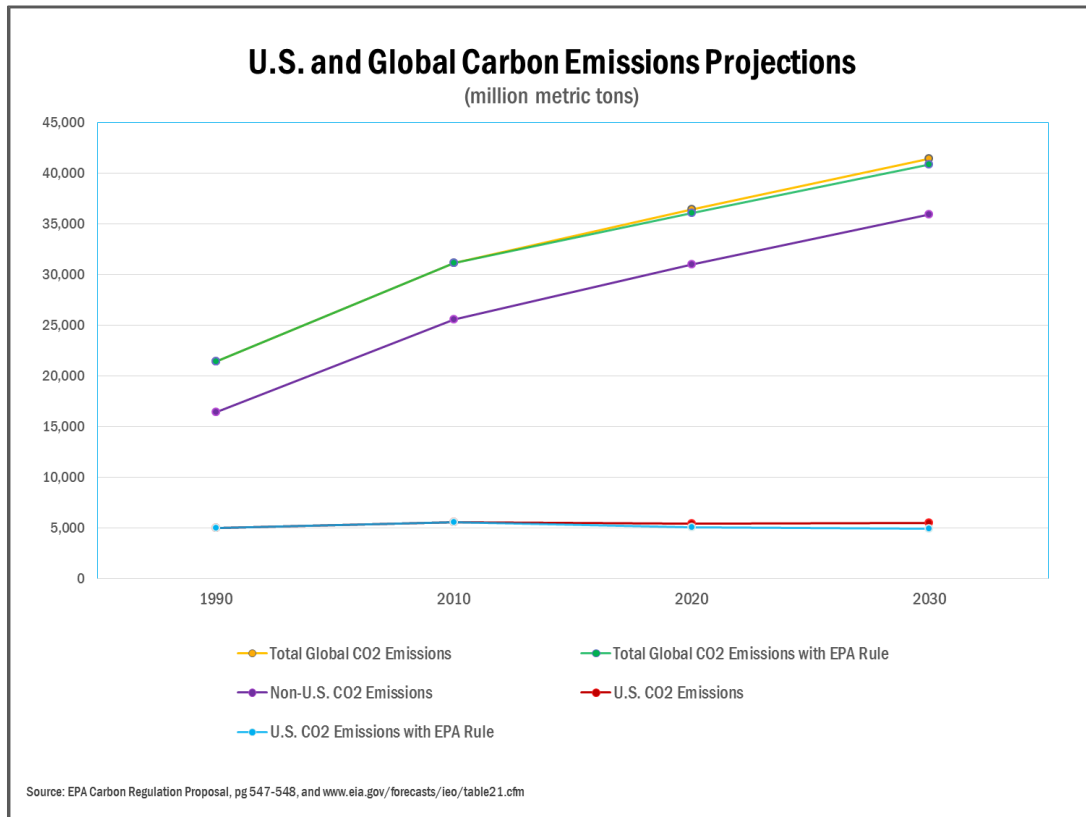
<sup>14</sup> EIA, *International Energy Outlook 2013*.

<sup>15</sup> <http://www.news.com.au/finance/money/carbon-tax-scrapped-how-the-changes-will-affect-australian-consumers/story-fnagkbpv-1226991978689>

<sup>16</sup> World Resources Institute, *Global Coal Risk Assessment Data Analysis and Market Research*, November 2012.



trade-exposed industries such as chemicals, manufacturing, steel, and pulp and paper. Adding insult to injury, such circumstances would not actually serve to reduce carbon emissions, but instead simply *move* them to other countries that have not implemented similar restrictions.



### **Process and Timeline.**

- EPA has repeatedly stated its intention to work closely with states and stakeholders in a deliberative, collaborative process. Administrator McCarthy recently stated, “*My goal is not to supplant what the states are doing, but to support it*” and that the rulemaking process will be “*an absolute collaboration between the federal and state government...This is a partnership if there ever was one.*”<sup>17</sup>
- Despite the magnitude and incredible complexity of EPA’s proposal, and despite requests for additional time to develop public comments, the agency plans to finalize and implement the rules on a rushed and arbitrary timeline. **At a minimum, EPA needs to hold additional public hearings on the rule, extend the comment**

<sup>17</sup> <http://bipartisanpolicy.org/events/2014/04/state-regional-and-company-approaches-reduce-power-sector-ghg-emissions>



**period beyond the current 120-day length, and grant state requests for additional time to develop responses to the proposal.**

### **Rule Structure and Scope, and Cooperation with States.**

- EPA is pursuing a regulatory standard for one emissions source (fossil-fuel power plants) based on actions that it expects to be taken well beyond the source's physical location and controlling authority, and in many cases by entities that are not directly subject to regulation under section 111 of the Clean Air Act. **This structure raises major legal and practical problems regarding the viability of the rule.** EPA has to date failed to address such problems, and provided little to no information regarding what authority it is relying upon to institute such an expansive regime, and how it intends to proceed if it does not approve of individual state implementation plans.

### **Lack of Flexibility.**

- EPA has repeatedly emphasized that “flexibility” is the cornerstone of its proposal. In her speech announcing the rule, Administrator McCarthy emphasized that states can “pick from a portfolio of options” and “mix and match to get to their goal.”<sup>18</sup> While many states and stakeholders in fact sought maximum compliance flexibility prior to the rule, the “portfolio of options” (aka “building blocks”) that comprise the foundation of EPA’s proposal result in such stringent emissions “targets” that states will have little flexibility.
- By incorporating reduction measures beyond affected sources, EPA was able to tighten individual state targets substantially. While the agency’s “mix and match” messaging implies otherwise, if the emissions reductions called for from one individual building block are not able to be met, EPA states that they must be made up for through even greater reductions in another building block (or by alternative measures that EPA does not specify). Because individual building block targets were set at aggressive levels, there is little to no “wobble room” between options. **As a result, and unless EPA incorporates true flexibility into the rule, states will face major compliance challenges.**
- EPA should also consider removing the interim targets that begin in 2020. The interim requirements in the proposed rule mandate reductions beginning in 2020,

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<sup>18</sup><http://yosemite.epa.gov/opa/admpress.nsf/8d49f7ad4bbcf4ef852573590040b7f6/c45baade030b640785257ceb003f3ac3!OpenDocument>





just a few years after state plans are to be approved. In fact, virtually all of the power plant retirements EPA projects from the proposal will occur by 2020. This raises electric reliability questions and simply leaves too little time to replace critical electric generation resources.

### **Technological achievability.**

- EPA has asserted that each of the individual building block targets assigned to states are based on “reasonably achievable rather than maximum performance levels.” We are concerned that, as with its proposed rule for new power plants, EPA is basing enormously impactful mandates on technology assumptions that have yet to be demonstrated as achievable at a reasonable cost and in some cases achievable at *any* cost. Detailed analysis must be undertaken and made available to the public.

### **Use of 2012 baseline.**

- EPA’s decision to use a 2012 baseline does not give credit to states, power generators and other entities who have worked to reduce emissions, deploy renewables and invest in energy efficiency prior to that date. In fact, in many cases it *penalizes* them.

### **Follow-on Regulations.**

- EPA’s regulations for power plants are only the first step of the Administration’s broader GHG regulatory agenda. As the agency has committed to a suite of follow-on rules, many Partnership member organizations will be impacted twice—both as electricity customers and also as industries “next in line” for subsequent rules that EPA plans to pursue. For example, last month EPA proposed new rules restricting emissions from municipal landfills, and the agency’s current budget request to Congress notes it will soon begin considering new GHG regulations on the following sectors: refineries, pulp and paper, iron and steel production, livestock operations, and cement manufacturing.<sup>19</sup> The substance, process, and ultimate outcome of the initial regulations on power plants are certain to influence the regulations that follow.

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<sup>19</sup> U.S. EPA Fiscal Year 2015 Budget Request. *Budget Justification of Appropriation Estimates for the Committee on Appropriations*. March 2014. <http://www2.epa.gov/planandbudget/fy2015>