

**EPA Listening Session on  
Proposed Carbon Pollution Standard for New Power Plants**

**The Honorable Karen A. Harbert  
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U.S. Chamber of Commerce**

**November 7, 2013**

**Docket ID: EPA-HQ-OAR-2013-0495**

Thank you for the opportunity to present comments today. I am Karen Harbert, president and CEO of the Institute for 21<sup>st</sup> Century Energy, an affiliate of the U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system.

I will submit my complete written statement for the hearing record.

Since *Massachusetts vs. EPA*, the Chamber has been clear in its view that the Clean Air Act (CAA) was never intended to regulate greenhouse gases (GHG), and is poorly designed for such a task. Every GHG proposal we have seen out of EPA over the past five years provides confirmation of this view. However, if EPA continues to insist on stretching its CAA authority beyond all recognition, there are some practical considerations it must take into account to limit the economic damage of these rules.

1. Ensure a robust regulatory development process that takes the time to get it right.

First and foremost, EPA must ensure that the potentially unprecedented reach and impact of this rulemaking is accompanied by a robust, inclusive regulatory development process commensurate with the magnitude of the rules and not subject to political considerations or timelines.

It is difficult to overstate the economic threat presented by these regulations, which together with other EPA rules could wipe out an entire industry—something Congress surely never contemplated. Restricting carbon dioxide emissions from electric power plants is an enormous, complicated, and unprecedented undertaking, but only the tip of EPA's regulatory iceberg. As the National Chamber Litigation Center stated in its

successful petition for writ of certiorari before the Supreme Court, the harm from EPA's broader GHG agenda stretches throughout the entire U.S. economy:

“EPA's rulemakings establish a regulatory apparatus the likes, costs, and breadth of which have never before been seen, effectively establishing EPA as a national zoning board with jurisdiction over the entire economy—for the first time ever imposing the Clean Air Act's regulatory burdens so heavily and directly on States, industry, farms, convenience stores, hospitals, shopping malls, churches, even homes.”<sup>1</sup>

Once in place, these rules would amount to a massive, regressive back-door energy tax, posing a serious threat to American jobs and economic competitiveness, while having virtually no impact on global GHG concentrations. It is absolutely critical, therefore, that the agency take the time necessary to get the regulation right. This entails several important process considerations. For example:

- EPA should commit to ensuring that its greenhouse gas rulemaking process will allow sufficient time to consider and respond to relevant agency, stakeholder, and public reactions to the forthcoming Supreme Court decision on EPA's GHG regulatory authority, which is expected in June 2014.
- Equally important is establishing a reasonable overarching timeline for this rule. In June, President Obama issued an Executive Memorandum directing EPA to issue its proposed regulation by June 2014, finalize it within one year, and require States to submit compliance plans to EPA for approval by June 2016.<sup>2</sup>

This arbitrary timeline is extremely troubling. When President Obama rejected the Keystone XL Pipeline in January 2012 after it had undergone more than three years of Federal reviews, he asserted that a “rushed and arbitrary deadline...prevented a full assessment of the pipeline's impact” and “prevented the State Department from gathering the information necessary to approve the project and protect the American people.”<sup>3</sup>

By comparison, a two-year timeline to develop and promulgate not only the first-ever Federal greenhouse regulations on power plants and the review of 50 different state implementation plans clearly is inadequate. New regulations that will directly impact electric power generation facilities responsible for

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<sup>1</sup>[http://www.chamberlitigation.com/sites/default/files/scotus/files/2013/U.S.%20Chamber,%20et%20al.%20Certiorari%20Petition%20--%20U.S.%20Chamber,%20et%20al.%20v.%20EPA%20\(U.S.%20Supreme%20Court\).pdf](http://www.chamberlitigation.com/sites/default/files/scotus/files/2013/U.S.%20Chamber,%20et%20al.%20Certiorari%20Petition%20--%20U.S.%20Chamber,%20et%20al.%20v.%20EPA%20(U.S.%20Supreme%20Court).pdf)

<sup>2</sup><http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards>

<sup>3</sup><http://www.whitehouse.gov/the-press-office/2012/01/18/statement-president-keystone-xl-pipeline>

approximately 40% of our nation's electricity should be more thoroughly evaluated than a single pipeline that crosses the U.S./Canadian border. Accordingly, the President should adhere to his own practice on important environmental decision-making processes, and avoid "rushed and arbitrary deadlines" that prevent EPA from gathering the information necessary to ensure the least onerous regulation.

- Particularly during this pre-rulemaking stage, EPA has an opportunity to work with key stakeholders to address the widespread concerns regarding the design and impacts of this rule. At a minimum, this should include additional listening sessions in states that will be most directly impacted. The Chamber's Energy Institute, along with 13 state chamber organizations from around the country, have written Administrator McCarthy requesting additional listening sessions be held in regions most dependent on coal for electricity.<sup>4</sup> Many more business and labor leaders, concerned citizens and elected officials, have made similar calls.

It's important to note that the absence of public outreach in disproportionately affected states appears inconsistent with EPA's own *Public Involvement Policy*, which states "when the subject of a public hearing, meeting or other information exchange process relates to conditions or facilities in a specific geographic area, EPA should hold the public hearing or meeting in that general geographic area."<sup>5</sup>

- Finally, EPA should ensure its deadline for written comments is set at least 60 days after the final listening session so stakeholders can review and assimilate relevant information before drafting and submitting public comments. Additionally, EPA should make public all written comments submitted throughout the rulemaking process. It is my understanding that EPA currently does not intend to make public written comments submitted as part of these listening sessions. In the interest of basic transparency and information sharing, written comments should be publicly posted.

## 2. Ensure the rule maximizes State input and compliance flexibility.

This should include full consideration of the unique circumstances of distinct regions and individual stakeholders. As part of this, EPA should recognize and restore the historical role of the States as having primary responsibility for developing performance standards associated with existing sources under the Clean Air Act.

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<sup>4</sup> <http://www.energyxxi.org/sites/default/files/Chambers-%20EPA%20Listening%20Sessions%20ltr%2010%2030%2013%20Final.pdf>

<sup>5</sup> <http://www.epa.gov/publicinvolvement/pdf/policy2003.pdf>

The importance of this principle was detailed in a recent white paper by 17 state attorneys general, which warned of “the tendency of EPA to seek to expand the scope of its jurisdiction at the cost of relegating the role of the States to merely implementing whatever Washington prescribes, regardless of its wisdom, cost, or efficiency in light of local circumstances.”<sup>6</sup>

In testimony to Congress last month, Administrator McCarthy suggested that state outreach would be a key element of EPA’s outreach plans before crafting these regulations:

“For existing plants, we are engaged in outreach to a broad group of stakeholders with expertise who can inform the development of proposed standards, regulations, or guidelines, which we expect to issue in June of 2014. These guidelines will provide guidance to States, which have the primary role in developing and implementing plans to address carbon pollution from existing plants. This framework will allow us to capitalize on state leadership and innovation while also accounting for regional diversity and providing the necessary flexibility.”<sup>7</sup>

Administrator McCarthy’s recognition of the importance of working closely with state and local stakeholders deserves commendation, but EPA must follow-through on this commitment, beginning with additional listening sessions in those States anticipated to bear the brunt of the new rules, and by sustaining close consultation and cooperation with States throughout the regulatory development process.

### 3. Ensure the Rule’s GHG Benefits Justify its Costs.

In January 2011, President Obama issued Executive Order 13563, “*Improving Regulation and Regulatory Review*.”<sup>8</sup> The Directive established new rules for agencies in crafting regulations, requiring that rulemakings be adopted “only upon a reasoned determination that its benefits justify its costs” and that agencies “tailor regulations to impose the least burden on society.”

Due to the potentially devastating impacts of GHG regulations on power plants and electricity consumers, it is critical that EPA’s rulemaking process pay more than lip service to costs and benefits. This begins with a thorough and objective analysis of the costs and benefits of reducing GHGs under any rule, taking into account the fact that global emissions of GHGs will continue to grow rapidly no matter what the EPA does.

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<sup>6</sup> <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/20130911StateAGWhitePaper.pdf>.

White paper filed from state AGs from NE, OK, AK, FL, KS, MT, MI, AL, AZ, GA, KY, ND, OH, SD, WI, SC, WV, and IN.

<sup>7</sup> <http://docs.house.gov/meetings/IF/IF03/20130918/101308/HHRG-113-IF03-Wstate-McCarthyG-20130918.pdf>

<sup>8</sup> <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>

Such analysis should employ a “whole-economy model” that takes into account the cascading effects of large regulations across interconnected industries and markets.<sup>9</sup> It should also estimate potential employment losses consistent with the requirements of Clean Air Act section 321(a).<sup>10</sup> EPA should ensure cost-benefit analysis is peer-reviewed and adequate time is afforded for consideration of public comment on this analysis.

EPA should not employ “social cost of carbon” (SCC) estimates as part of its cost-benefit analysis. Such estimates have been widely criticized as inaccurate, unreliable, and highly misleading to stakeholders and the public. For example, a peer-reviewed scientific paper by Dr. Robert Pindyck of the Massachusetts Institute of Technology concluded that social cost of carbon models “have crucial flaws that make them close to useless as tools for policy analysis” and that their use in regulatory communications “suggests a level of knowledge and precision that is simply illusory, and can be highly misleading.”<sup>11</sup> The Chamber, along with numerous other business associations, have detailed numerous additional problems with SCC modeling and the secretive process used to develop the SCC, and they have formally requested it not be used in rulemaking processes.<sup>12</sup>

4. Ensure that greenhouse gas regulations on power plants be cost-effective, attainable, and avoid harming American jobs and the economy.

Finally, and most important: EPA should work to ensure that this regulation is reasonable and technologically achievable on a commercial scale. It is also vitally important that the EPA aim to preserve the affordability of electricity, maintain the reliability of the electric grid, and allow for coal to sustain its vital role in the nation’s diverse energy portfolio. EPA should similarly recognize and take care to avoid harmful impacts to the rest of the industrial economy, from refining and manufacturing to agriculture and mining. These are simple and straightforward priorities necessary to protect American jobs.

Ultimately, EPA has an obligation to ensure that the technical and legal foundations of this rulemaking—and the process through which they are arrived at—are robust,

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<sup>9</sup> See U.S. Chamber’s summary of concerns with recent EPA Clean Air Act cost-benefit analyses: <http://www.uschamber.com/reports/impacts-regulations-employment-nera>

<sup>10</sup> Section 321(a) requires EPA to “conduct continuing evaluations of potential loss or shifts of employment” resulting from air regulations, including “investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.”

<sup>11</sup> <http://web.mit.edu/rpindyck/www/Papers/Climate-Change-Policy-What-Do-the-Models-Tell-Us.pdf>

<sup>12</sup> [http://www.energyxxi.org/sites/default/files/090413\\_IQA%20Petition%20on%20Social%20Cost%20of%20Carbon.pdf](http://www.energyxxi.org/sites/default/files/090413_IQA%20Petition%20on%20Social%20Cost%20of%20Carbon.pdf)

transparent, fair, and set out in a reasonable timeframe. On behalf of the U.S. Chamber of Commerce, we stand ready to work with EPA to make sure these obligations are met.

Thank you.