The Arkansas State Chamber of Commerce and the Associated Industries of Arkansas, Inc., work jointly as the leading voice for business in Arkansas and serve as the primary business advocate on all issues affecting Arkansas employers, with the mission to promote a pro-business, free-enterprise agenda and prevent anti-business legislation, regulations and rules. On behalf of our almost 1300 members we submit the following comments.

Introduction

We urge you to reconsider the approach that the U.S. Environmental Protection Agency (EPA) has set forth in its proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, also known as the Clean Power Plan ("CPP"). Access to abundant supplies of affordable and reliable energy is lowering costs for businesses and households across the country while spurring economic growth and job creation as our economy continues to recover from the worst recession in generations. With both abundance and diversity of supply, energy has become this country's competitive advantage. In order to foster continued growth and take full advantage of our energy potential, we need policies that support the continued provision of reliable and affordable electricity.

The CPP is incompatible with numerous practical and technical aspects of America's electricity system. Further, the proposed rule is based on a flawed interpretation of the Clean Air Act (CAA) that would represent a vast expansion of the agency's regulatory reach into the authority held by states and other federal regulatory agencies. For the reasons described below, we urge the EPA to consider a more reasonable path forward that supports American jobs and the economy, maintains electric reliability, and allows all energy sources to play a role in our energy future.

POLICY

The U.S. Needs an All-of-the-Above Energy Strategy

Consumers of energy, whether they are large manufacturers or individual households, benefit most from an all-of-the-above energy strategy. Diversity of energy supply is not only critical in keeping energy costs reasonable, it is essential in ensuring steady and reliable streams of energy to power our factories and heat our homes. For many U.S. businesses that compete in a global economy, energy represents a major input cost that can ultimately determine viability. Right now, energy is an advantage for many U.S. industries in large part because of the abundant and diverse supplies of affordable energy resources that are collectively keeping energy costs reasonable and supply reliable. However, if regulations such as the EPA's CPP force energy options off the table, energy prices will become more volatile, costs will increase, reliability will be threatened and ultimately U.S. firms will be less competitive.

The CPP Will Increase Energy Prices

The CPP could cause serious harm to the U.S economy, raising energy prices and costing jobs. 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. 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 adverse spillover impacts of higher electricity rates on overall economic activity.

Independent analyses show that the impacts on energy prices could be substantially higher. An analysis by NERA Economic Consulting indicated that average U.S. electricity prices would increase by 12% per year and the total costs of the rule could be between $366 billion to $479 billion over a 15 year timeframe. Many of these costs will have to be absorbed by residential, commercial and industrial energy consumers who will not only pay more for energy but also could be forced to purchase new equipment. Further, 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. EPA's rule will only exacerbate this trend.

Reliability Concerns will be Exacerbated by EPA's Regulations

Despite unequivocal statements from EPA Administrator Gina McCarthy that "nothing we do can threaten reliability" in the Clean Power Plan, independent experts and key stakeholders are increasingly alarmed that the CPP will in fact do exactly that: dramatically increase electrical grid stress and reliability challenges. The North American Electricity Reliability Corporation (NERC) reviewed EPA's rule and concluded that the agency's proposed regulatory deadlines "would increase the use of controlled load shedding and potential for wide-scale, uncontrolled outages". It is imperative that such reliability concerns be addressed. Accordingly, we call on EPA to work with reliability experts, states, and industry stakeholders to undertake a detailed, comprehensive analysis of potential reliability impacts of the CPP before it is finalized. Such an analysis is imperative so that we can know, before it is too late, whether reliable electric service can be maintained in conjunction with the implementation of the CPP.

The impact that the January 2014 polar vortex had on energy markets further demonstrates the importance of a diverse electricity power fleet and how further federal regulations aimed at limiting fuel options could threaten the nation's electrical grid. The extreme cold temperatures put a tremendous strain on the electrical grid and resulted in a price spike on the electricity spot market covering the mid-Atlantic and parts of the Midwest. Specifically, the cost of producing electricity in those areas climbed above $1,000 per megawatt-hour for the first time as cold temperatures hit the East Coast. To put this price in context, according to the Energy Information Administration, the average wholesale price in that region last year was $42 per megawatt-hour. The price spike was the result of a strong demand for natural gas for heating and electricity production.

Greater use of natural gas is partly due to increased supply making it more competitive. However, federal regulations like Utility Mercury and Air Toxics Standard (MATS) have led to the closure of a significant number of coal-fired power plants, thereby forcing natural gas generation to pick up the slack. The result is less energy diversity and an electrical grid that is more vulnerable to price spikes during extreme temperatures. In many regions of the country, households depend on natural gas for heat. When temperatures drop, demand for natural gas increases for all consumers including households, commercial buildings and the electric-power sector. Natural gas supplies can be temporarily strained, particularly in regions where there is insufficient pipeline capacity to meet the spike in demand. During the 2014 polar vortex, some regions of the country experienced demand for natural gas in excess of supply, which would have led to interruptions of electricity service if other generating resources – particular those powered by coal – were not there.

Unfortunately, this situation is poised to only get worse. At least one utility company that generates electricity in the mid-Atlantic region stated that 89% of its coal-fired power plants that are scheduled to be shut down in 2015 were running during the cold snap created by the polar vortex. This situation is a clear-cut example of how the CPP can and likely will threaten the reliability and affordability of electricity in this country.

The Administration's Approach to Greenhouse Gas (GHG) Regulations Will Drive Manufacturing to Less Efficient Countries and Potentially Result in an Increase of Global Emissions

U.S. industries are some of the most efficient in the world both in terms of energy use and GHG emissions. In 2010, the GHG emission intensity of the U.S. economy, measured by total carbon dioxide emissions divided by GDP, was 31% below the worldwide average and 67% below that of nations that are not part of the Organization for Economic Cooperation and Development. Based on current projections, worldwide energy-related CO2 emissions will rise approximately 20% by 2035 while U.S. emissions are projected to be relatively flat. Thus, the carbon intensity of the U.S. economy is set to drop even further when compared to worldwide averages and non-OECD nations.

If the Administration adopts policies that substantially increase the cost of energy – thereby decreasing the competitiveness of U.S. industries – investments and emissions will be sent to other, less efficient countries with higher CO2 emissions intensities. As a result, overly restrictive and costly U.S. policies to reduce emissions will not only be offset by the rapidly increasing emissions from other countries, but could actually result in a net *increase* in global emissions. A more effective policy approach for lowering global GHG concentrations would be to promote "on-shoring" of jobs and production from more carbon intensive countries to the less carbon intensive U.S. economy.

Additional Global Implications

EPA's regulations will impose billions of dollars in costs on the U.S. economy but fail to meaningfully reduce CO2 emissions on a global scale. For example, the projected CO2 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 CO2 emissions in that year. This reduction in 2030 would offset the equivalent of just 13.5 days of CO2 emissions from China.

Meanwhile, the U.S. has led the world in reducing CO2 emissions. Since 2005, U.S. emissions have fallen by 13 per cent while China's have grown by 69 per cent and India's have increased by 53 percent. International emissions will only continue to grow rapidly — between 2011 and 2030, CO2 emissions from non-OECD nations are projected to grow by nine billion tons per year. In other words, for every ton of CO2 reduced in 2030 as a result of EPA's proposed rule, the rest of the world will have increased emissions by more than 16 tons.

Americans Do Not Support the EPA's Approach

Recent polling has indicated that Americans across the country do not support EPA's GHG regulations. Findings from a national survey include the following:

- A majority believe the United States cannot afford new costs and potential job losses resulting from the EPA regulations.
- Nearly half of those polled say they are not willing to pay a single dollar more in their energy bill to accommodate the new EPA regulations.

- A plurality of those polled—47 percent—oppose the regulations. Opposition to the rule is stronger in many of the states that stand to be hit hardest by the rule's expected energy price increases and job loss impacts.
- The vast majority of Americans—over 70 percent—want energy policies that encompass all energy sources.

LEGAL

The EPA's CPP is unprecedented not only in its policy reach, but in the significant number of proposed actions that exceed the EPA's authority under the Clean Air Act (CAA). At the outset, we have an overarching concern that the CPP crosses a line by expanding the EPA's 40-year mandate as the preeminent regulator of the environment to the nation's primary regulator of energy. The EPA's proposed rule dictates not only what types of fuel should be used to generate our nation's electricity, but how and in what quantities end-users should consume it.

EPA Lacks Authority to Issue Section 111(d) Regulations for Source Categories Subject to Regulation Under Section 112

Under the plain language of the Clean Air Act, the EPA is prohibited from regulating GHG emissions from existing power plants. The agency lacks the legal authority to regulate GHG emissions from existing power plants that are already subject to Section 112 National Emissions Standard for Hazardous Air Pollutants ("NESHAP") of the Clean Air Act.

Based upon the plain language of the Clean Air Act, Supreme Court case law, and the EPA's own words, the agency does not have the legal authority to regulate GHG emissions from existing power plants that are already being regulated under Section 112 (NESHAP).

- Plain Language of Clean Air Act: The EPA seeks to regulate GHG emissions from existing power plants under Section 111(d) of the Clean Air Act (Existing Source Performance Standards or "ESPS"). Those same power plants are already regulated as "existing sources" under Section 112 of the Clean Air Act (NESHAP). Under the plain language of Section 111(d), the EPA cannot establish ESPS for existing sources for any air pollutant emitted from any source category that is regulated under a Section 112 NESHAP.

- Supreme Court Precedent: Supreme Court case law unequivocally affirms the prohibition on regulating pollutants under Section 111(d) if they are already regulated under Section 112. In *American Electric Power Co. v. Connecticut*, 131 S. Ct. 2527 (2011), the Supreme Court noted that "EPA may not employ [ESPS under Section 111(d)] if existing stationary sources of the pollutant in question are regulated under the [NAAQS] program … or the [NESHAP] program [under Section 112]…." *AEP*, 131 S. Ct. at 2537 & n.7.

- EPA's Own Words: In its proposed Clean Air Mercury Rule, the EPA recognized that a literal interpretation of Section 111(d) would prevent the agency from regulating pollutants from sources regulated under Section 112. *See* 69 Fed. Reg. 4651, 4685 (Jan. 30, 2004).

EPA Lacks the Authority to Set Binding State Emission Rate Targets

Under section 111(d) of the CAA, states, not EPA, have the authority to establish standards of performance under section 111(d) of the CAA. EPA's authority under 111(d) is

clearly limited to "establishing procedures" by which states submit plans establishing standards of performance. EPA misinterprets the unambiguous language in section 111(d) by commandeering the establishment of standards of performance from states. EPA's final rule should allow states the flexibility to establish their own performance standards based on the unique circumstances of their state.

EPA Improperly Sets Performance Standards Based on Potential Reductions Outside the Fence-line of the Regulated Unit

Under section 111(d) of the CAA, EPA's authority is limited to regulating emissions from existing sources within a specific source category (here, fossil fuel-fired electric generating units or "EGUs"). However, in the CPP, EPA reaches well beyond emission reductions possible at existing fossil EGUs and requires reductions from the rest of the electricity sector and even to reductions driven by changes in consumer behavior. Through its four building blocks EPA defines the Best System of Emission Reduction ("BSER") for fossil fuel-fired EGUs as a combination of emission reductions from efficiency upgrades at coal-fired power units, increased utilization of natural gas units, extending the life of nuclear plants, installing more renewable power and significant gains in demand-side energy efficiency. This so-called "integrated electricity system" approach for defining BSER stretches so far beyond the fence-line of a regulated facility that literally every consumer of electricity in the United States could be implicated as a potential compliance option for EPA's rule.

This approach is not only unprecedented, it is unlawful. We request that EPA reevaluate its proposed method for establishing BSER and limit any guidance in setting performance standards to actions that can reasonably take place within the fence-line of a regulated facility.

EPA Lacks the Authority to Implement the Proposed CPP

EPA cannot set a performance standard for states that the agency itself lacks the authority to implement should states fail to submit a satisfactory implementation plan. EPA does not have the authority to implement building blocks two, three or four in a state and thus cannot impose these requirements.

EPA cannot implement building block two because it does not have authority to make electricity dispatching decisions. Under the Federal Power Act ("FPA"), states are given authority to regulate electricity within their borders. Along these lines, states have exclusive jurisdiction over the distribution of electricity to end-use customers. States also retain the authority to determine the rules for the operation of power plants within their borders. Thus, EPA's reliance on building block two in setting performance standards exceeds its CAA authority.

EPA cannot implement the nuclear component of building block three because the National Regulatory Commission ("NRC") has authority over permitting, re-permitting and commissioning of nuclear power plants. EPA has no authority to extend the permitting life of a nuclear power plant and is equally misguided to assume that all existing nuclear plants will ultimately be relicensed by the NRC. Equally, EPA cannot implement the renewable energy component of building block three because states, and not the federal government, have the authority to establish renewable portfolio standards ("RPS"). The decision of whether or not to adopt, change, or abandon an RPS is reserved exclusively to the states and cannot be usurped by the EPA *via* the CAA. EPA's reliance on building block three in setting performance standards also exceeds its CAA authority.

Finally, EPA lacks authority to mandate demand-side energy efficiency programs within states. Demand-side energy efficiency programs such as Energy Efficiency and Resource Standards (EERE) are programs that states have the sole authority to implement within their borders. EPA's reliance on building block four in setting performance standards exceeds its CAA authority.

EPA's Administrative Record is Insufficient to Support its Assumptions Under the Four Building Blocks

EPA fails to adequately justify or disclose its assumptions for each of the four building blocks used to establish BSER. In building block one, EPA makes a blanket assumption that all coal-fired EGUs are capable of achieving a six percent heat rate improvement. In doing so, EPA ignores the real-world conditions faced by coal-fired EGUs. Most coal-fired units in the U.S. already undergo regular maintenance and upgrades to improve efficiency as part of good business practices. Improving heat rates makes units more competitive from a cost perspective and thus unit owners regularly evaluate and have already implemented opportunities to improve efficiency and performance. To assume that all coal units could improve their performance by six percent ignores the fact that many units have already completed all economically feasible unit upgrades and improvements.

In building block two, EPA assumes that all states with both coal and natural gas electricity units can increase the utilization of natural gas combined cycle (NGCC) units to an average capacity factor of 70 percent while reducing the coal-fired plant utilization by an equivalent amount. While it is not disputed that individual NGCC units can operate at or above a 70 percent capacity factor, EPA's rule fails to address several real-world issues that must be overcome before making such a blanket assumption. EPA has failed to consider the unit-specific circumstances of NGCC units such as what and how states have permitted them to operate and whether or not they are warranted to run at higher capacity factors. Second, EPA has failed to give adequate consideration to potential infrastructure challenges from significantly increasing NGCC utilization. Natural gas pipelines have limited capacity and in many parts of the country natural gas is utilized for both electricity generation and home heating. Substantial, coincident increases in natural gas utilization in the power sector could strain limited pipeline capacity. Further, because existing NGCC facilities do not share locations with the coal facilities they are expected to replace; additional electric transmission infrastructure could be needed to ensure that reliability can be maintained and electricity can reach consumers. EPA has not accounted for any of these challenges in making its blanket assumption in building block two.

In building block three, EPA assumes that no "at-risk" nuclear energy power plants will be retired and that all units currently under construction will come online. EPA assumes that six percent of the entire nuclear fleet is at-risk and by keeping those units in operation, states can achieve additional emission reductions. EPA fails to consider the possibility that an economic or other operational circumstance might exist by which the unit owner or the NRC – the federal body with regulatory authority over nuclear units – might determine that a facility has reached the end of its useful life. The record is insufficient to support EPA's assumptions in building block three as it relates to nuclear units.

Additionally in building block three, EPA assumes that states can increase the construction and utilization of renewable energy facilities by assuming an average of various future state RPS requirements and then imposing that partial average upon all states in an EPA-defined region. This approach ignores the differences and unique challenges that exist from state to state when it comes to increasing renewable energy deployment and provides no weight to

states that have chosen not to implement an RPS. Renewable energy resources can vary greatly between neighboring states, and in fact, even within a state. Further, state RPSs are often aspirational and contain "safety valve" mechanisms that slow or pause requirements if, for example, electricity rates increase above a threshold level. Thus, just because a state has adopted a state RPS requirement, that does not mean that the technical or economic achievability of the standard has been demonstrated for that state or its neighboring states. EPA's approach for building block three as it relates to renewable power is deeply flawed and is not adequately supported by the record.

Finally, in building block four, EPA makes an assumption that states, on average, can achieve annual energy efficiency savings of 1.5 percent. In setting this target, EPA relies on data derived from the recent recession and the slow economic recovery that followed. EPA needs to provide analysis of their energy efficiency assumptions during more robust economic periods in order to demonstrate the reasonableness of its assumptions.

EPA Should Not Expand GHG Regulations to Other Source Categories

EPA should not proceed with additional GHG standards of performance for other source categories. In addition to the fact that it has no legal obligation to do so, the EPA should opt not to propose GHG standards of performance for other source categories for the reasons identified below.

As to the regulation of GHG emissions, other source categories in the manufacturing sector require a fundamentally different approach than EGUs because they are impacted by a much broader range of factors, such as industry economics, geography, federal and state incentives, transportation systems, ownership structures, foreign competition, profit margins, and customer bases. Regulating GHG emissions from the manufacturing sector is neither necessary nor sensible at this time, particularly given that so many industries have already been reducing GHG emissions through voluntary and extensive energy efficiency initiatives.

Imposing uniform GHG standards of performance on other source categories could disadvantage these sectors by making them less competitive on the global stage. New regulations with high compliance costs that do not account for trade exposure will translate into significant job losses and reductions in economic activity without actually reducing GHG emissions.

For all of these reasons, the EPA should not expand GHG performance standards to other source categories. If the EPA were to proceed with regulations for other sectors, however, then the agency, at a minimum, should first proceed with an Advanced Notice of Proposed Rulemaking ("ANPR") for any particular source category. An ANPR would allow for notice and public comment from impacted stakeholders, as well as a source-category specific endangerment determination for GHG emissions.

Other Sources Regulated Under a Portfolio Approach Must be Exempted from or Given Credit Toward Compliance with Any Subsequent GHG Regulation

While EPA should not proceed with standards of performance for other source categories, it must make assurances that other sources are not at risk of being regulated by the EGU standards and then again for section 111 standards for their own source category. EPA should include a provision in the final rule that exempts any facility that is part of a state compliance plan for EGUs under the CPP from any requirements under a future 111 regulation for that source category. At a minimum EPA should ensure that there is a crediting mechanism to guard against the potential double-regulation of other source categories.

EPA's Analysis of the Costs and Benefits of the Proposed CPP in the Regulatory Impact Analysis is Deficient and Unreliable

EPA fails to adequately or reliably analyze the potential costs and benefits of the proposed CPP in its Regulatory Impact Analysis ("RIA"). By simultaneously overestimating the potential benefits of the proposal and underestimating the costs, EPA claims (in error) that the proposed rule will produce economic benefits. If done properly, a cost-benefit analysis of the CPP would reveal significant costs in both the short term and the long term.

EPA's cost-benefit analysis for the proposed CPP has numerous problems. First, EPA's reliance on the "social cost of carbon" is wholly inappropriate because that calculation has not been subject to a rigorous and transparent rulemaking process, and it fails to address properly international benefits and costs. Second, EPA fails to use full-economy modeling to evaluate employment impacts. Among other problems, this approach fails to account for the negative impact on employment likely to be experienced by other industries that support or rely upon coal generation and the communities surrounding them. Finally, EPA's reliance on co-benefits from simultaneous reductions in pollutants other than GHGs is misplaced and must be revised to more appropriately reflect the health benefits that would actually be attributable to this proposed rule.

EPA Must Conduct a Review of the Impacts of the Proposed CPP on Small Businesses

EPA has failed to convene a Small Business Advocacy Review panel and conduct a regulatory flexibility analysis to evaluate the proposed rule's impact on small businesses, as required by the Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act. Instead of conducting this analysis, EPA claims that the proposed rule "will not have a significant economic impact on a substantial number of small entities" because States, not EPA, are ultimately responsible for implementing Section 111(d). This claim is completely inaccurate because the impact on electricity prices and the potential regulation of entities beyond the fence line undoubtedly will impact small businesses.

EPA itself recognizes that the proposed rule would result in increases in electricity prices in some areas by as much as twelve percent. Electricity costs are a significant concern for many small businesses and are a top three business expense for 35% of all small businesses. This alone demonstrates the widespread impact that the proposed rule would have on small businesses. Consequently, EPA should withdraw the current proposal, convene a Small Business Advocacy Review panel, and prepare a regulatory flexibility analysis before proceeding with a new proposal under Section 111(d).

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