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President & CEO

August 3, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N. W.  
Mail Code: 1101A  
Washington, DC 20460

Dear Administrator McCarthy:

The National Mining Association (“NMA”) requests that the Environmental Protection Agency (“EPA” or the “Agency”) stay the effectiveness of its “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (the “Rule”) pending judicial review. Under the Administrative Procedure Act, 5 U.S.C. § 705, EPA has authority to stay the Rule if it “finds that justice so requires.” Justice requires that the Agency stay the effectiveness of the Rule.

First, the Rule is likely to be reversed on appeal for the reasons stated at great length in NMA’s comments on the proposed rule. Having regulated electric generating units (“EGUs”) under the Section 112 hazardous air pollutant program, EPA has no authority to regulate those units under Section 111(d). And even if EPA had authority to regulate EGUs under Section 111(d), the Agency does not have authority to impose CO<sub>2</sub> reduction “goals” on States. Section 111(d) provides for States, not EPA, to “establish” emissions performance standards.

Moreover, the Rule, as you yourself have described it, aims at nothing less than the comprehensive “transformation” of the American electric power grid.<sup>1</sup> Congress, however, did not give EPA the power to restructure how the nation produces and consumes electricity. Congress did not even give the Federal Energy Regulatory Commission, much less EPA, that power. Instead, Congress, in the Federal Power Act, preserved States’ inherent power over electric utility resource planning and development. 16 U.S.C. § 824(a).

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<sup>1</sup> “EPA Chief Lays Out Bold Vision for Power Plant Greenhouse Gas Rule,” SNL Renewable Energy Weekly, Feb. 14, 2014, <https://www.snl.com/InteractiveX/article.aspx?id=26802187&KPLT=2>.

In claiming that Section 111(d) provides the Agency with such vast power, EPA contradicts the language and legislative history of that statute, as well as more than four decades of consistent EPA practice. EPA thus renders that provision “unrecognizable” not only “to the Congress that designed it,” *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2444 (2014), but also to every previous EPA Administrator that has implemented it going back to the beginning of the Agency. Section 111(d) simply does not provide the sweeping authority EPA wants.

The language of Section 111(d) provides authority for EPA to develop regulations applicable to individual sources within a particular source category. See Section 111(d)(1)(A) (“any existing source”), Section 111(d)(1)(A)(ii) (“such existing source”), Section 111(d)(1)(B) (“the existing source”). The Rule contradicts this plain language by treating the entire power sector as if it were a single source, requiring States to effect changes in the operation of facilities that do not even emit CO<sub>2</sub> (like nuclear and renewable facilities) and even requiring States to force their citizens to reduce their use of electricity. The Rule thus far transcends the limited authority on which it is based.

Second, implementing the rule will irreparably injure the coal mining industry, coal mining workers, and coal mining communities. The Rule, of course, has no purpose other than to reduce the use of coal for electric generation as a means of reducing power sector CO<sub>2</sub> emissions. As a result, *all* of the emission reductions that the Rule will achieve result from reduced power sector coal usage. Since more than 90 percent of coal sold in the United States is used for power generation, the Rule will cripple domestic coal production. Other EPA rules have already led to thousands of coal miners losing their jobs; the Rule will lead to many thousands more layoffs. This will in turn devastate the many local communities and state economies that depend on coal employment for their tax base and for spin-off economic benefits.

The harm the Rule causes will be experienced immediately. Coal-mining is a highly capital-intensive industry with long lead times for planning and investment. Given the significant reductions in coal production that the Rule will cause, coal companies will need to make long-term decisions in the next year in anticipation of a sharply curtailed coal market. Money that would otherwise be invested in coal mines will not be invested, additional coal reserves that would otherwise be acquired will not be acquired, and plans will be put in place to phase down operations. These decisions will become locked in place over the course of the year-and-a-half to two years that it normally takes to litigate a case in the United States Court of Appeals for the D.C. Circuit.

Third, no entities will be harmed by a stay. Granting the stay will freeze the status quo in place while the case is litigated on the merits. Participants in electric power markets therefore will continue business as usual, with none suffering injury as a result of the stay. Any States wishing to proceed with CO<sub>2</sub> reduction measures would continue to be able to do so to the extent authorized under State law.

Fourth, the public interest favors granting the stay. Plainly, it would be a massive waste of time and resources for every State in the country to reengineer their portions of the electric grid within the next year if the Rule is reversed in court. Because everyone uses electricity, a vast number of interests are affected by the rule, including the public at large. Thus, every State will have to undertake intensive and broad stakeholder processes to reconfigure its portion of the grid. All of this time, effort, money and controversy will be for naught if the Rule is overturned. Worse, changes to the grid that States would not choose to make absent the Rule will be locked in if a stay is not issued.

On the other side of ledger, staying the rule will not affect the climate. This is because, as EPA concedes, the Rule itself, even when fully implemented, will not meaningfully lower temperatures, reduce sea level rise or otherwise have climate impacts. For instance, the amount of CO<sub>2</sub> emission reductions that EPA predicts that the rule will create in 2020 when compliance with the program begins—371 million metric tons<sup>2</sup>—is well under one percent of global “CO<sub>2</sub>e” (CO<sub>2</sub> and other greenhouse gases expressed as CO<sub>2</sub> equivalent) emitted *today*.<sup>3</sup> Perhaps because the impact of this reduction in emissions on asserted climate change will be so insignificant, EPA does not even attempt to estimate how the rule will improve the climate. The evidence shows that, using EPA’s theory of how sensitive the climate is to atmospheric CO<sub>2</sub> concentrations, the rule will reduce global temperatures by a mere 100ths of a degree.<sup>4</sup> As EPA says, “climate change presents a problem that the United States alone cannot solve. Even if the United States were to reduce its greenhouse gas emissions to zero, that step would be far from enough to avoid substantial climate change.”<sup>5</sup> Obviously, then, delaying implementation of the Rule for the time it takes to litigate the validity of the rule will have no possible effect on the climate.

For these reasons, NMA requests that EPA stay the Rule pending judicial review.

Sincerely,



Hal Quinn

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<sup>2</sup> EPA, Regulatory Impact Analysis for proposed rule, Table ES-2 at ES-6.

<sup>3</sup> The latest United Nations Environment Programme (UNEP) Emissions Gap Report estimated that global CO<sub>2</sub>e emissions were 50.1 Gt in 2010, a figure that the report estimated had increased somewhat since then. UNEP, THE EMISSIONS GAP REPORT 2013, Nov. 2013 at 3, cited in NMA Comments at ---.

<sup>4</sup> American Coalition for Clean Coal Electricity, *Climate Effects of EPA’s Proposed Carbon Regulations*, June 2014, [www.americaspower.org](http://www.americaspower.org).

<sup>5</sup> EPA Social Cost of Carbon Technical Support Document at 10.