

Congress of the United States
Washington, DC 20515

July 22, 2015

The Honorable Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

We understand the Environmental Protection Agency (EPA) has submitted its draft final rule to regulate carbon dioxide (CO₂) from existing fossil fuel-fired power plants under section 111(d) of the Clean Air Act (CAA) to the Office of Information and Regulatory Affairs (OIRA) for review. We write with concerns regarding serious and extraordinary legal and economic aspects of this rule that violate core principles of regulatory decision-making.

In the proposed rule, EPA seeks to impose individual CO₂ mandates for each state's electricity sector, to be implemented and subject to enforcement on accelerated timelines. EPA projects this rule will result in tens of billions of dollars in compliance costs, higher electricity prices, and the potential elimination of nearly 20 percent of all coal-fired generating capacity -- 46 to 49 gigawatts (GW) -- by 2020. EPA does not examine the ripple effects of higher electricity prices across the economy, potential impacts on key sectors, or the cumulative costs with other regulations. Despite the billions of dollars in costs, the rule is not projected by EPA to have any measurable effect on domestic or global temperatures, and lacks specific regulatory objectives in this regard.

The rule is widely expected to be challenged on constitutional, statutory, jurisdictional, and regulatory grounds. The critical legal and economic issues raised by the proposed rule have been the subject of thousands of pages of substantive comments submitted by states and other affected entities to EPA. These issues have also been raised in congressional hearings, proceedings before the Federal Energy Regulatory Commission and state legislatures, and pleadings submitted to various federal courts. Despite the unprecedented nature of the rule and its legal vulnerabilities, however, EPA has proposed that states expend significant resources to develop and submit compliance plans before legal challenges to the rule could be resolved.

Against that backdrop, we write to request that you ensure full interagency review of the proposed rule by all appropriate agencies, including review of the proposal's consistency with applicable law, impact on electricity rates and reliability, and other implementation issues raised by commenters. We also request that OIRA return the proposed rule to EPA if it would compel compliance, including the submittal of state plans, before legal challenges could be resolved by the courts.

As proposed, the rule is not tailored to minimize the burdens on state and local governmental entities, or to avoid unreasonable regulatory costs. To the contrary, states and affected entities would be required to make decisions to shut down existing facilities, begin developing new infrastructure, and make other potentially expensive and irreversible decisions even if the rule is ultimately struck down or modified.

Our concerns about the serious legal and regulatory deficiencies of EPA's pending rule, and its costs and regulatory burdens, are reinforced by the U.S. Supreme Court's recent *Michigan et al. v. EPA et al.* decision. In that case, the Court addressed EPA's "Mercury and Air Toxics Standards," estimated by the agency to cost \$9.6 billion annually with annual benefits from reducing mercury emissions of \$4 million to \$6 million. The Court held that agencies must operate within the bounds of reasonable interpretation and that, in ignoring costs when deciding whether to regulate power plants under section 112 of the CAA, EPA had "strayed far beyond those bounds." The Court stated that "[o]ne would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits." While the Court found the agency's actions to be unlawful, billions of dollars have already been spent to comply with the regulation. Further, while EPA had assured no more than 4.7 GW of coal-fired capacity would retire due to this rule, the Energy Information Administration has projected that nearly 13 GW will retire in 2015 primarily because of this regulation.

In its June 2014 decision entitled *Utility Air Regulatory Group v. EPA et al.*, the Supreme Court also rejected EPA's "Tailoring Rule," under which EPA asserted authority to require greenhouse gas permits for over six million emissions sources. The Court found the agency's statutory interpretation "would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." The Court further stated: "We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate." Prior to this decision, however, this regulation also resulted in years of entangled rulemaking processes for states and substantial regulatory uncertainties and delays in the permitting of new projects and expansions.

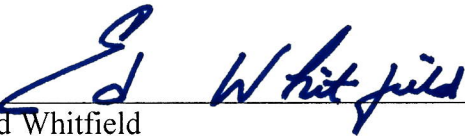
Regardless of the administration's current climate policies, federal agencies such as EPA have an obligation to comply with applicable law and to adhere to core regulatory principles that result in the least burdensome regulatory outcomes and avoid unreasonable costs. For the foregoing reasons, we ask that you implement our requests above, including returning the rule to EPA for reconsideration to the extent it does not amend the compliance deadlines for submittal of state plans to allow for completion of judicial review, or it otherwise fails to comply with relevant executive orders concerning regulatory review.

Sincerely,



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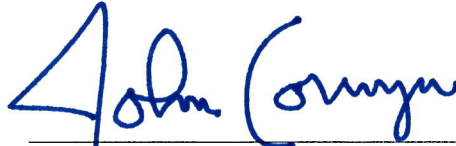
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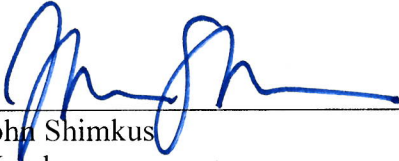
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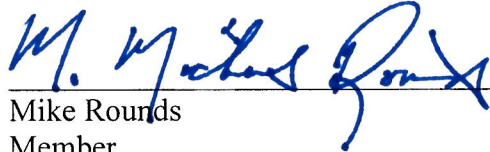
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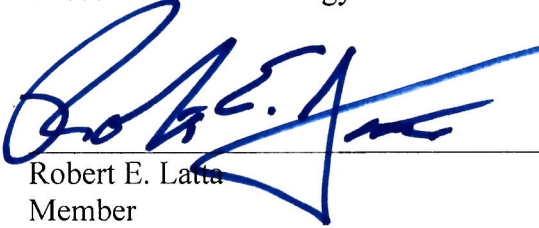
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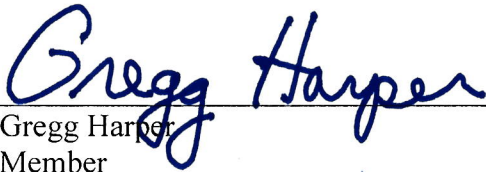
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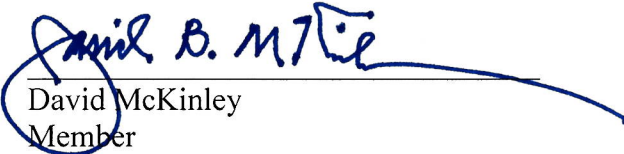
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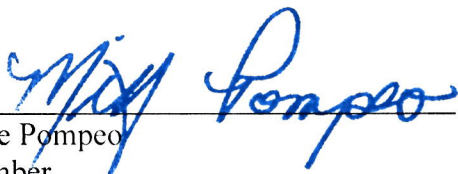
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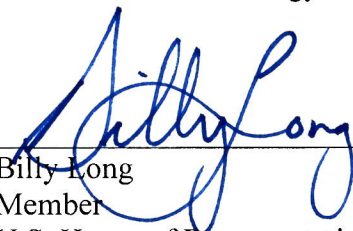
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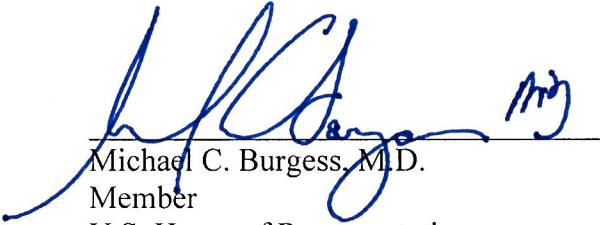
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