



Partnership for a Better Energy Future



July 21, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

The Partnership for a Better Energy Future (the Partnership), a coalition of business organizations representing over 80 percent of the U.S. economy, appreciates this opportunity to provide initial feedback on the Environmental Protection Agency's (EPA) proposed carbon emissions regulations for existing electric generating units.

Established in January 2014, the Partnership's fundamental mission is to promote an "all-of-the-above" energy strategy that ensures the continued availability of reliable and affordable energy for American families and businesses. As of July 2014 the Partnership totals 163 members, which include national organizations as well as state and local associations in 36 different states. All are united by widespread concerns that EPA's proposed rule—which would institute a new regulatory framework on states transforming how electricity is generated, distributed, transmitted and used—could eliminate the critical competitive advantage that affordable and reliable electricity provides to the American economy.

While the Partnership and its member organizations continue to review EPA's proposal, it is clear that it will be disruptive to and is fundamentally incompatible with numerous practical and technical aspects of America's electricity system. Even more fundamentally, the proposal is based on a flawed interpretation of the Clean Air Act. We therefore urge EPA to go back to the drawing board on this rule. In the meantime, we want to highlight five high-level issues that are representative of our more detailed objections to EPA's proposal.

1. **Electricity price increases and economic impacts.** While EPA's proposal must be thoroughly and independently analyzed to better understand its costs and electricity market implications, it is clear that the rule presents a significant threat to American jobs and the economy. EPA itself estimates that its rule will increase electricity prices between 6 and 7 percent nationally in 2020,

and up to 12 percent in some locations.¹ These increases will place an immense burden on U.S. businesses for which affordable energy provides a critical operating advantage in competitive global markets, particularly the energy-intensive and trade-exposed industries represented by many of our member organizations.

2. **Rule Structure and Scope.** EPA is pursuing a regulatory standard on one industry source (fossil-fuel power plants) based on potential actions 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 significant legal and practical questions regarding the viability of the rule. EPA has to date failed to answer such questions, 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. This is critical information that EPA should disclose in the interest of maximizing transparency and continued cooperation with states and stakeholders.
3. **Technological achievability.** As noted, EPA has asserted that each of the individual building block targets assigned to states are based on "reasonably achievable rather than maximum performance levels."² 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.
4. **Follow-on Regulations.** EPA's regulations on power plants are only the first step of the Administration's broader greenhouse gas 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 has committed to pursuing. 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. The substance, process, and ultimate outcome of the initial regulations on power plants are certain to influence the regulations that follow.
5. **Process and timeline.** As noted, states and stakeholders continue to struggle to interpret and react to the rule's more than 1,600 pages of highly technical materials. Despite this ongoing confusion, and despite your repeated emphasis on responding to stakeholder concerns and ensuring a robust and transparent public deliberation process, the agency has scheduled public hearings in only four locations, and has provided few if any opportunities for stakeholders and other interested parties to publicly ask the agency direct questions regarding the design and

¹ EPA Clean Power Plan Regulatory Impact Analysis, available at <http://www2.epa.gov/sites/production/files/2014-06/documents/20140602ria-clean-power-plan.pdf>

² <https://www.federalregister.gov/articles/2014/06/18/2014-13726/carbon-pollution-emission-guidelines-for-existing-stationary-sources-electric-utility-generating#p-964>

potential impacts of its rule. Our concerns with these limited opportunities for open and interactive communication with the agency are compounded by what appears to be a rushed regulatory implementation timeline. A regulation as complex and far-reaching as what is being proposed must prioritize a robust, inclusive rulemaking process over meeting arbitrary and rushed deadlines.

We recognize that addressing each of these aforementioned issues will require substantial time and effort of the EPA, states, and stakeholders alike. However, as a first step, we respectfully ask that EPA take two critical actions to enhance the public involvement process associated with this rule:

1. We request that you hold additional public hearings on the rule in order to enable a greater number of citizens and stakeholders representing a broader range of viewpoints and geographic locations to provide input on the rule. Further, and perhaps most important, we ask that at least some component of these public meetings be interactive, so impacted stakeholders can ask EPA direct questions regarding the intent and implications of its proposed rule. Such a format will help bring clarity to an immensely complicated regulatory proposal, and greatly enhance the public-private and federal-state cooperation that you have emphasized are essential to the success of the rule.
2. We request that you extend the currently-planned 120-day comment period by at least 60 days to ensure that affected stakeholders have sufficient time to assess the rule and consider feedback provided at the forthcoming public hearings.

Thank you for your attention to these concerns. We stand ready and eager to work cooperatively with you to ensure EPA's carbon regulations address these critical issues.

Sincerely,

The Partnership for a Better Energy Future