



**Comments on EPA’s Proposed Rule, “Carbon Pollution Emission Guidelines
for Existing Stationary Sources: Electric Utility Generating Units”
(EPA Clean Power Plan)**

Docket ID No. EPA–HQ–OAR–2013–0602

**Prepared by
The Association of Union Constructors (TAUC)**

The Association of Union Constructors (TAUC) appreciates the opportunity to provide comments in response to EPA’s proposed rule (e.g. the Clean Power Plan), which sets forth new carbon dioxide (CO₂) pollution emission guidelines for existing electric utility generating units (**Docket ID No. EPA–HQ–OAR–2013–0602**).

TAUC is a national trade association representing more than 2,000 contractor firms that utilize union labor for their clients’ industrial construction and maintenance projects. We support EPA’s pursuit of cleaner air, and there is no question that a healthier environment is in the best interest of all Americans. In fact, the dramatic reduction in industrial emissions over the last several decades has been due in no small part to the diligent efforts of our union contractors and their partners in the union building trades.

Unfortunately, the proposed rule will do little to advance EPA’s worthy goals. Instead, it will have a disproportionately negative effect on the more than 500 coal-fired power plants in the United States that generate nearly 40% of the country’s electricity.¹

EPA’s proposal sets specific carbon pollution reduction goals for each state, with some states hit much harder than others (a concern we will address later in our comments). The agency came up with the goals by creating a Best System of Emission Reduction (BSER) for each state. The BSER was made up of four elements or “building blocks” in agency parlance: (1) Coal plant heat

¹ Koch, Wendy and John Kelly. “Planned coal-power closings won’t cut CO₂ much.” *USA Today* 9 June 2014: <http://www.usatoday.com/story/money/business/2014/06/08/coal-plant-retirements-barely-cut-carbon-emissions/10008553/>.

rate improvement; (2) Increased use of existing natural gas; (3) Clean generation (renewable & nuclear); (4) End-use energy efficiency.

EPA's overall stated goal is to reduce carbon pollution from the U.S. power sector 30% from 2005 levels by 2030. To make matters worse, EPA is requiring states to meet interim carbon reduction goals beginning in 2020, less than six years from now.² For many coal-fired plants, reaching these extreme goals in such a short period of time will prove either economically unfeasible or physically impossible (or both), thus forcing their premature retirements.

EPA's Clean Power Plan will also negatively impact the complex U.S. energy grid as a whole. If enacted as written, the rule will reduce the grid's reliability, lead to skyrocketing utility bills and damage the fragile national economy for years, if not decades, to come. Despite EPA's sterling intentions, the proposed rule will end up slashing not CO₂ emissions, but thousands of good-paying middle-class jobs instead.

For these and other reasons outlined below, TAUC respectfully urges the Agency to reconsider the wisdom of imposing yet another set of drastic emissions reductions on a utility industry that has already been crippled by unrealistic regulatory requirements over the past several years, most notably the Mercury and Air Toxics Standard (MATS). What is needed is not another set of onerous regulations, but rather recognition by federal officials that a diversified energy portfolio and an "all of the above" approach – in which coal-fired generation is allowed to continue contributing a significant portion of our electricity needs – is vital to the country's economic survival.

A. Coal-Fired Power Plant Closures

The maintenance and installation of environmentally friendly technologies (e.g. scrubbers, flue-gas desulfurization units, selective catalytic reduction devices, etc.) at coal-fired power plants represent a significant source of work for many TAUC union contractors and their partners in the union building trades. For these types of jobs, most TAUC members utilize a project labor agreement known as the National Maintenance Agreements (NMA), administered by TAUC's sister organization, the National Maintenance Agreements Policy Committee, Inc. (NMAPC). The NMA provides a standardized set of terms and conditions for unionized work in the U.S. industrial maintenance and construction sectors.

To illustrate the importance of coal-fired power plants to our membership and the skilled union craft workers they employ, consider the following: between 2006 and mid-2014, more than 240 million work hours were performed under the terms of the NMA at utilities across the United States, and the vast majority were coal-fired power plants. That translates into well over 135,000 stable, well-paying jobs for middle-class families.

² "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule." *Federal Register* 79 (18 June 2014): 34837.

But what will happen to these coal-fired power plants if EPA’s proposed rule is enacted? According to *The New York Times*, “...experts say that it could close hundreds of [coal-fired] plants...”³ In its own Regulatory Impact Analysis (RIA), the Agency states: “Relative to the base case, about 30 to 49 GW of coal-fired capacity is projected to be uneconomic to maintain (about 12% to 19% of all coal-fired capacity projected to be in service in the base case) by 2020 under the range of scenarios analyzed.”⁴ John Novak, Executive Director of Environmental Issues for the National Rural Electric Cooperative Association (NRECA), told EPA at a July 29, 2014 public hearing in Washington, D.C., “The proposal will likely result in the premature closure of a number of power plants owned by electric cooperatives – placing even greater financial burdens on the cooperatives and the consumers who own them.”⁵

What will these plant closures mean for our member contractors? The chart below lists the ten states with the largest number of utility-related hours worked under the NMA between 2006 and mid-2014 (again, the vast majority of these hours are worked at coal-fired generating units). The third column displays the percentage by which each state must reduce its carbon emissions by 2030, as mandated in EPA’s proposal. The fourth and final column shows how these percentage reductions compare to other states in terms of severity.

NMA Utility Work Hours: Top Ten States				
Rank	State	Utility NMA Work Hours, 2006 - Mid-2014 (Est.)	% Reduction in CO2 Emissions by 2030 (Goals Set By EPA) ⁶	Ranking of Reduction Goal Across 49 States (VT Excl.)
1	Ohio	49,622,286	-28	32nd highest
2	Indiana	33,180,590	-20	41st highest
3	Pennsylvania	32,218,398	-31	30th highest
4	West Virginia	29,192,525	-20	42nd highest
5	Missouri	17,833,446	-21	39th highest
6	Illinois	10,675,454	-33	27th highest
7	North Dakota	7,916,447	-11	-- (Lowest in US)
8	Kentucky	7,093,067	-18	44th highest
9	New Jersey	6,493,876	-43	9th highest
10	Michigan	6,042,419	-31	29th highest

Source: NMAPC (except as noted).

³ Davenport, Coral. “Obama to Take Action to Slash Coal Pollution.” *The New York Times* 1 June 2014: <http://nyti.ms/1pxOFFN>.

⁴ EPA, *Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants*, June 2014: Page 3-32.

⁵ Novak, John. Oral testimony (Transcript), EPA Public Hearing, July 29, 2014.

⁶ “Unpacking the EPA’s Proposed Clean Power Plan: Understanding the Metric.” Bipartisan Policy Center. Online blog entry, 5 August 2014: <http://bipartisanpolicy.org/blog/energy/2014/07/23/unpacking-epa-proposed-clean-power-plan>.

As you can see, some of the largest work-producing states face daunting reduction goals. Ohio, which has generated the largest number of NMA utility work hours over the given timeframe, must slash emissions by 28%; Pennsylvania, the third-largest contributor of NMA utility hours, by 31%; and New Jersey, ranking ninth, must cut CO₂ by a whopping 43%.

Equally instructive is how these states rank nationally in terms of the reduction percentages. Ohio's 28% reduction goal – an incredibly difficult one to achieve – is only the thirty-second highest goal nationwide, meaning 17 other states face even more daunting challenges. North Dakota's reduction goal of 11% is the lowest of the 49 states (Vermont was excluded, because it has no fossil-fueled power plants). We sincerely ask EPA to dwell on this statistic for a moment. Under any reasonable scenario, an 11% reduction in carbon emissions by 2030 (around a decade and a half) would be hailed as a monumental achievement. But in the distorted scheme put forth by the agency, it is the bare minimum – the lowest emissions reduction goal in the entire country. Regretfully, this speaks volumes about the unrealistic goals set by the EPA.

B. Consequence #1: Job Losses

The most obvious consequence of the widespread closure of coal-fired power plants will be massive job losses. Fewer coal plants mean less work for TAUC member contractors. There will be no more advanced pollution control systems to install; no more coal-fired units to clean and maintain on a periodic basis; no additional generating units or substations to build. This will create a ripple effect. Union contractors will be forced to scale back operations, likely resulting in layoffs of full-time employees. Needless to say, it will also mean less work for the thousands of highly skilled union craft workers contractors employ, as well. Specialty subcontractors will suffer too, as prime contractors will not require their services as often as before. This will trigger a secondary ripple effect, as these subcontractors will be forced to lay off full-time employees and cut back on employment of union craft workers. It is a vicious cycle, one that will leave countless families wondering how they will put food on the table or pay the monthly mortgage.

Writing in *The Wall Street Journal* on August 14, 2014, Edwin Hill, President of the International Brotherhood of Electrical Workers (IBEW), stated: “When gauged by accepted industry metrics, the agency's plans also would result in the loss of some 52,000 permanent direct jobs in utilities, mining and rail and at least another 100,000 jobs in related industries. High-skill, middle-class jobs would be lost, falling heavily in rural communities that have few comparable employment opportunities.”⁷

Shortly before EPA released its proposed rule, the U.S. Chamber of Commerce's Institute for 21st Century Energy issued a report on the impact of new carbon regulations. The report employed a hypothetical set of regulations that turned out to be slightly less onerous than EPA's official version. The Institute based its calculations in part on a potential 42% carbon reduction goal by 2030. In its proposed rule, EPA's actual goal turned out to be a 30% reduction by the same date. However, the results of the Institute's analysis are still “in the ballpark” in terms of potential impact, and thus informative and enlightening. It found that through 2030, new carbon

⁷ Hill, Edwin D. “Electrical Workers vs. the EPA.” *The Wall Street Journal* 14 August 2014: <http://online.wsj.com/articles/edwin-hill-the-electrical-workers-union-vs-the-epa-1408057784>.

regulations would, on average, lower U.S. Gross Domestic Product by \$51 billion annually, with a peak decline of over \$100 billion in 2025; result in the loss of more than 220,000 jobs annually, peaking at 422,000 in 2022; and lower U.S. household total disposable income by more than \$580 billion.⁸ Even if we reduce these totals somewhat to adjust for the difference between a 42% goal in carbon emissions cuts and a 30% goal, the numbers are still staggering.

C. Consequence #2: Stress on the Grid

Fewer coal-fired units will further endanger the reliability of the nation's complex network of electricity providers, referred to colloquially as "the grid." The word "further" is important, because it cannot be stressed enough that the grid's reliability has already been significantly weakened by previous coal-fired plant closures, many of which were triggered by unworkable, cost-prohibitive EPA regulations such as the MATS rule. Our fear is that the Clean Power Plan's unrealistic emission reduction demands will deliver a fatal "coup de grace" to the grid by triggering waves of plant closures and rendering it incapable of meeting the nation's increasing utility demands, especially in periods of extreme heat and cold.

At EPA's July 29 public hearing in Washington, D.C., IBEW International Representative Bruce Burton told agency officials the following: "During the [MATS] rulemaking process EPA claimed MATS would close only 4.7 gigawatts of coal generation. The IBEW and others told EPA their number was far too rosy and that MATS would close 56 gigawatts of coal [generation]. It turned out we were correct. Experts now confirm that 56 gigawatts of coal generation will be lost by 2016. Taken together, MATS and the Clean Power Plan will close approximately 40 percent of today's coal fleet."⁹

It should be pointed out (as IBEW President Hill did in his previously referenced *WSJ* op-ed) that the 56 GW of lost coal-fired generation referenced by Burton is separate from the 30-49 GW that EPA itself estimates will be lost by 2020 due to implementation of the Clean Power Plan. Even accounting for some overlap between these two figures, the combined loss of electrical generation over the next several years will likely easily exceed 100 GW.

Nicholas Akins is President, Chairman and CEO of American Electric Power, one of the country's largest electric utilities, providing electricity to more than 5 million customers in nearly a dozen states. On April 10, 2014, Akins testified at a hearing on electric grid reliability and security held by the Senate Energy and Natural Resources Committee. He reiterated a statement he had made to the press a month earlier – namely, that 89% of the generation AEP will be retiring in 2015 (largely due to the MATS rule) was needed to meet record electricity demand in January 2014, during the period of extreme cold caused by the polar vortex.¹⁰

⁸ Assessing the Impact of Potential New Carbon Regulations in the United States: Executive Summary. Institute for 21st Century Energy, May 2014: Pages 6-8.

⁹ Burton, Bruce. Oral testimony (Transcript), EPA Public Hearing, July 29, 2014.

¹⁰ Akins, Nicholas. Testimony (Transcript), Senate Energy and Natural Resources Committee Hearing, April 10, 2014, Page 2.

On January 7, 2014, a day of brutal arctic temperatures across the Eastern U.S., the PJM Interconnection – a huge grid that provides power to more than 60 million citizens in 13 states and the District of Columbia – set a new record peak load of 141,846 MW while roughly 22% of its installed capacity was unavailable due to maintenance, repairs or fuel supply issues.¹¹ The total power available on the PJM was slightly more than 142,000 MW,¹² meaning the PJM came within a hair’s breadth of catastrophic collapse. Heroic efforts on the part of power officials across the PJM helped pull the grid back from the edge. As Akins memorably told the Senate Committee, “This country did not just dodge a bullet – we dodged a cannonball.”¹³

This was not a nightmare scenario – it was reality. If the grid is already facing such severe strains (thanks in large part to MATS and the plethora of other strict requirements foisted upon the power sector over the past several years), why would EPA choose to introduce yet another set of misguided regulations that will, inevitably, force even more coal-fired units to retire? And the story only gets worse: across the PJM, an additional 13,000 MW of generating capacity will retire by the middle of 2015.¹⁴

The rosy scenario adopted by EPA and other boosters of the Clean Power Plan is that enough natural gas capacity will smoothly and seamlessly come online in time to offset these retirements, and that utilities across the country will be able to easily integrate alternative forms of energy into their portfolios. The truth, however, is that the natural gas and electricity industries are two very unique systems that have begun working together only very recently. As Akins pointed out in his testimony, “Inconsistencies in scheduling protocols between the gas and electric industries create difficulties for many gas-fired generators. These inconsistencies make it challenging for gas-fueled generators to purchase gas supplies and schedule pipeline capacity...The industries matured independently, and they developed unique operating procedures that worked well for their individual businesses. Now that they both have operating protocols that have been in place for decades, we need to find a way to successfully merge their processes.”¹⁵ Will such processes be in place in time to adequately handle the next weather-driven electricity surge like the one we saw on January 7, 2014? One can only hope, but a solution is by no means guaranteed.

D. Consequence #3: Increasing Reliance on Price-Volatile Fuels

Another inherent problem with the argument that lost coal-fired generation can easily be replaced with gas lies in simple economics. Coal has traditionally been available at low, predictable costs, which is one of the main reasons utilities have relied on it to provide a significant portion of the country’s baseload power supply. Natural gas, on the other hand, is one of, if not the most, price-volatile fuels on the market today. In a recent editorial, Sandra Hochstetter Byrd, Vice President of Public Affairs and Member Services for the Arkansas

¹¹ Ibid, Page 3.

¹² Barr, Gene (President and CEO, Pennsylvania Chamber of Business and Industry). Letter to the Honorable Gina McCarthy, Environmental Protection Agency. July 28, 2014: Page 2.

¹³ Akins, Page 4.

¹⁴ Ibid, Page 9.

¹⁵ Ibid, Page 10.

Electric Cooperative Corporation (AECC), said that because EPA’s Clean Power Plan is forcing utilities to move away from coal, her cooperative will be forced to put all of its “base-load eggs into one fuel basket – natural gas.” She went on to write:

Recent history from this past winter illustrates the risk of this one-fuel reliance strategy. Natural gas prices soared to incredibly high peaks on the coldest days, and there were gas plants in many states that could not start. Gas pipelines experienced delivery problems and supply flows were interrupted. At one point in New England (where there are very few coal plants) natural gas was not available to meet the peak demand, so some utilities were forced to burn **JET FUEL** to keep the lights on! But for the rest of the nation, coal was there to save the day. In fact, 92 percent of the energy to meet this unexpected surge in winter demand east of the Mississippi came from **coal plants**. And, unfortunately, many of those plants are slated to be retired under EPA’s proposed rule.¹⁶

Duane Highley, President and CEO of AECC, wrote in another article that during a particularly cold day in Arkansas in February 2014, natural gas prices increased by a staggering 1,000%. He likened natural gas prices to a roller coaster ride and warned electricity customers: “...[I]f the [EPA] is successful in eliminating coal-based generation, as it is seeking to do with proposed regulations, we will be forced to rely on natural gas to supply the majority of your energy needs. Then, when the weather turns extreme, as it often does in summer and winter, your energy bills will also become extreme. Price volatility will become the new normal, and a graph of your electric bill will look more like a roller coaster than a straight line.”¹⁷

Even EPA acknowledges the price differential between coal and natural gas. In the proposed rule, the Agency states:

The capital costs of plant modifications required to switch a coal-fired EGU completely to natural gas are roughly \$100–300/kW, excluding pipeline costs. For plants that require additional pipeline capacity, the capital cost of constructing new pipeline laterals is approximately \$1 million per mile of pipeline built. Offsetting these capital costs, conversion to 100 percent gas input would typically reduce the EGU’s fixed operating and maintenance costs by about 33 percent due mainly to certain equipment retirements and a reduction in staffing, while non-fuel variable costs would be reduced by about 25 percent due to reduced maintenance and waste disposal costs. However, in most cases, the most significant cost change associated with switching from coal to gas in a coal-fired boiler is likely to be the difference in fuel cost. **Using EIA’s projections of future coal and natural gas prices, switching a steam EGU’s fuel from coal to gas typically would more than double the EGU’s fuel cost per MWh of generation.**¹⁸ [Emphasis added]

¹⁶ Byrd, Sandra Hochstetter. “Dismantling America’s electric system: EPA dictates utility rules to states.” *Arkansas Living*, July 2014: 17.

¹⁷ Highley, Duane. “The natural gas roller-coaster ride.” *Arkansas Living*, March 2014: 5.

¹⁸ “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule.” *Federal Register* 79 (18 June 2014): 34875.

AECC's Byrd further notes, "Once the rule goes into effect and utility companies are forced to retire coal plants and increase the use of natural gas plants, natural gas market prices will quickly rise due to the increase in demand. And, in light of the fact that natural gas is traded in a global commodity market, which is the most volatile commodity market in the world, the cost and price volatility of electricity will follow."¹⁹

E. Consequence #4: Rising Electricity Prices

Along with contractors, utility companies and union craft workers, the everyday American consumer will also be hurt by the Clean Power Plan. In its Regulatory Impact Analysis, EPA "projects an increase in the national average (contiguous U.S.) retail electricity price between 5.9% and 6.5% in 2020 and between 2.7% and 3.1% by 2030 under the proposed Option 1, compared to the modeled base case price estimate in those years. Under Option 2, on average, EPA projects an average retail price increase ranging...[up] to 4.0% in 2020, and from 2.4% to 2.7% in 2025."²⁰

EPA further estimates that actual electricity bills received by consumers will increase anywhere from 1.1% to 3.2% in 2020, then decrease several percentage points in 2025 and by as much as 8.7% in 2030, reflecting "the combined effects of changes in both average retail rates (driven by the effects of all four building blocks) and lower electricity demand (driven by the fourth building block, demand-side energy efficiency)."²¹ The agency's optimistic outlook on the future is enviable, but it is based on a vague notion that everything will work out the way EPA thinks it will. Unfortunately, the utility industry and TAUC contractor members know through hard experience that that almost never happens. Furthermore, EPA offers no remedy to consumers during the initial electricity price spikes in 2020 – though one supposes they will be able to comfort themselves with the thought that, in five to ten years, the government has promised that their bills will decrease.

F. Various Other Concerns Re: EPA's Clean Power Plan

TAUC shares the concerns of numerous stakeholders in the business community and utility industry regarding various aspects of EPA's proposed rule, especially the individual state carbon emission reduction goals. In this section we will briefly touch on some of the major areas where the agency needs to provide further information and, in some cases, make wholesale changes to the rule.

- 1. Disclose more information on how the state-level emission goals were created.** EPA's repeated refusal to answer basic questions about how it formulated the highly technical state BSERs and reduction goals is deeply concerning. On June 30, 2014, the news website Climate Central published an article by journalist Bobby Magill entitled "Basis

¹⁹ Byrd, Page 16.

²⁰ EPA, *Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants*, June 2014: Pages 3-38 – 3-39.

²¹ *Ibid*, Page 3-43.

for EPA Clean Power Plan Cuts a ‘Mystery’.”²² The article contained many disturbing revelations, including:

- “How the U.S. Environmental Protection Agency reached the Clean Power Plan's CO₂ emissions reduction goal for each state is somewhat mysterious, experts say, with answers buried in a complex formula that doesn't clearly detail why each state would have to slash its carbon dioxide emissions to a certain level under the plan.”
- “EPA officials did not answer questions about how the agency arrived at each state's CO₂ emissions reduction goal. EPA Media Relations Director George Hull told Climate Central that EPA officials and scientists can speak to journalists about technical details of the plan only on ‘background,’ a practice of providing information that cannot be quoted directly or attributed to a specific source.”
- “To explain how different states wound up with different targets, I think it’s a little bit of a mystery,” said Doug Vine, senior energy fellow with the Center for Climate and Energy Solutions.

On August 25, 2014, Kentucky Attorney General Jack Conway sent a letter to EPA Administrator Gina McCarthy, requesting that the agency “make available all data, information, and documents upon which it relied when drafting the proposed rule...” AG Conway further requested that EPA “immediately promulgate and publish a Notice of Data Availability (‘NODA’) that contains the technical documents and data requested.

Conway also noted that the Utility Air Regulatory Group (UARG), a nonprofit association of electric utilities and national trade associations, filed a Freedom of Information Act Request on August 1, 2014. The FOIA request calls on EPA to produce the 21 Integrated Planning Model runs performed by the agency while preparing the proposed rule.

“Further,” Conway wrote, “the Attorneys General of West Virginia and other states have tendered comments to this rulemaking seeking information regarding the alleged 16 facilities that have achieved heat rate improvements of three to eight percent year-to-year. The combined effect of omitting the 21 modeling runs and information regarding the achievability of a three to eight percent heat improvement from the public docket is to greatly restrict the public’s ability to fully analyze and comprehensively comment on the proposed 111(d) Rule [i.e. the Clean Power Plan]. My office has reviewed these issues and has grave concerns about the transparency of the rulemaking process. In order to ensure transparency, I am recommending the requested information be immediately placed into the public docket and the comment period be extended.”²³

²² Magill, Bobby. “Basis for EPA Clean Power Plan Cuts a ‘Mystery’.” Climate Central, 30 June 2014: <http://www.climatecentral.org/news/epa-clean-power-plan-emissions-co2-mystery-17666>.

²³ Conway, Jack (Kentucky Attorney General). Letter to the Honorable Gina McCarthy, Environmental Protection Agency. August 25, 2014.

2. Address U.S. Chamber of Commerce Criticisms. TAUC agrees with many of the points made by Mary K. Martin, Energy, Clean Air & Natural Resources Policy Counsel for the U.S. Chamber of Commerce in her statement at a public hearing in Washington, D.C. on July 29, 2014. Specifically, we agree with the Chamber that the EPA should immediately do the following:

- a. Convene a Small Business Advocacy Review panel for the proposed rule, to give small businesses a voice in the rulemaking process. Predicted higher electricity costs will certainly impact these businesses; thus a review panel is required.
- b. Give states more time to develop and submit their carbon reduction implementation plans. The current deadline is June 30, 2016; while there is an option for some states to apply for a one- or two-year extension, it should be automatically granted to all states to give them enough time to grapple with this incredibly complex rule.
- c. Provide more information re: the agency's cost-benefit analysis for the proposed rule – specifically, explain in greater detail how “social cost of carbon” estimates were calculated. As Martin notes, these estimates “have not gone through a rulemaking process, or been subject to the rigors of notice, public comment and peer review. The lack of transparency and data quality surrounding the “social cost of carbon” estimates should automatically disqualify them from use in any rulemaking process until these problems can be addressed.”²⁴

3. Answer troubling questions about the Clean Power Plan's underlying legality. On June 6, 2014, West Virginia Attorney General Patrick Morrisey wrote a letter to EPA Administrator McCarthy in which he requested that the agency withdraw the proposed rule immediately because it lacks legal authority to implement said rule. AG Morrisey argued that the EPA's single stated legal basis for the rule, Section 111(d) of the Clean Air Act (CAA), in fact “affirmatively *excludes* precisely what EPA is attempting to do in the Proposed Rule.”²⁵

In a nutshell, AG Morrisey's argument is that the plain text of Section 111(d) expressly prohibits the agency from regulating any air pollutant emitted from a source category regulated under Section 112 of the CAA. “Given that EPA has imposed extensive and onerous regulations on existing coal-fired power plants under Section 112, the agency cannot now use Section 111(d) to require regulation of CO₂ emissions from those same existing plants. This conclusion is so apparent,” he writes, “that even EPA concedes in its Legal Memorandum that a ‘literal reading’ of Section 111(d) prohibits the proposed rule.”

²⁴ Martin, Mary K. Testimony (transcript), EPA public hearing, July 29, 2014: Page 6.

²⁵ Morrisey, Patrick (West Virginia Attorney General). Letter to the Honorable Gina McCarthy, Environmental Protection Agency, June 6, 2014.

AG Morrissey continues: “The only textual justification that EPA’s Legal Memorandum offers for departing from the ‘literal’ terms of Section 111(d) is unpersuasive. The agency relies entirely on a one-sentence clerical entry in the 1990 Amendments to the Clean Air Act that was not codified in the U.S. Code but appears in the Statutes at Large. That entry, even EPA has admitted, was clearly a mistake because it sought to make a technical correction rendered moot by another amendment. *See* 70 Fed. Reg. at 16,031 (describing the entry as a ‘drafting error’). Nevertheless, EPA now claims that it must give meaning to this mistake and, as a result, has announced an interpretation of Section 111(d) that directly conflicts with the language in the U.S. Code. EPA’s interpretation rewrites Section 111(d) from a prohibition on the regulation of ‘any air pollutant...emitted from a source category which is regulated under [Section 112],’ as stated in the U.S. Code, to a more limited prohibition on the regulation of ‘any *hazardous* air pollutant’ emitted from such a source category. This sort of reasoning would be wrong under any circumstance, but it is particularly improper here, where it is being offered as the justification for one of the most costly regulations in this Nation’s history.”²⁶

West Virginia and 11 other states have since sued EPA based in part on AG Morrissey’s argument; to date, the agency has declined comment.²⁷ We urge EPA to address AG Morrissey’s specific arguments against the legality of the proposed rule. If the Clean Power Plan is indeed being foisted on the country on the basis of an almost nonexistent legal justification, it should be withdrawn immediately.

4. **Modify state emission formulations.** If EPA refuses to withdraw the rule (or substantially overhaul it), then TAUC respectfully urges the agency to at least make the regulations more workable for states and local utilities. It can do this by implementing some commonsense changes:
 - a. **Start calculating emissions targets using 2005 data, not 2012 data.** Although the goal of the Clean Power Plan is to reduce emissions 30% below 2005 levels, when it came time to formulate each state’s emissions target, EPA used average 2012 emissions rates from fossil-fired electrical generating units. This makes little sense. If 2005 emission rates constitute the benchmark against which emissions reductions will be measured, then it is logical (and fair) to calculate state emissions targets beginning in 2005, not 2012. By jumping ahead to 2012, EPA leapfrogs over some impressive emissions reductions achieved by plants in the intervening years.²⁸ Total U.S. CO₂ emissions fell by almost 9% between 2005 and 2013²⁹; the vast majority of these cuts, however, will not be counted by EPA, and states will not receive any credit for them. A comparable analogy would be if

²⁶ *Ibid*, Page 2.

²⁷ Banerjee, Neela. “12 states sue the EPA over proposed power plant regulations.” *Los Angeles Times* 4 August 2014: <http://www.latimes.com/business/la-fi-epa-lawsuit-20140805-story.html>.

²⁸ Barr, Gene (President and CEO, Pennsylvania Chamber of Business and Industry). Letter to the Honorable Gina McCarthy, Environmental Protection Agency. July 28, 2014: Page 6.

²⁹ Bryce, Robert. “Numbers Don’t Lie.” *National Review Online* 19 June 2014: <http://m.nationalreview.com/article/380709/numbers-dont-lie-robert-bryce>

a baseball team scored several homeruns in the first eight innings of the game, but the league decided to discount those runs, and only give the team credit for runs scored in the ninth and final inning. If EPA begins its calculations in 2005 rather than 2012, the emissions targets for many states would be much lower and more manageable, and several coal-fired plants might be able to survive.

- b. **Scrap the 6% heat rate improvement requirement for coal-fired plants.** When creating its four-building-block formula for setting state emissions targets, EPA included a stringent measure that called for a 6% heat improvement rate at all coal-fired electrical generating units (EGU). This has been condemned by many utility executives as unrealistic and unworkable. A more fair and achievable improvement rate would be in the 1-2% range. We strongly urge EPA to reconsider the 6% heat improvement rate requirement.
- c. **Scrap the expectation that natural gas-fired plants must run at minimum 70% capacity.** Several state utility officials have expressed concern over this portion of the proposed rule. Gene Barr of the Pennsylvania Chamber of Business and Industry put it this way: “Given that EPA purported to examine each state’s individual conditions, it is unreasonable that it should be expected that 70% of each states’ total natural gas-fired power plant capacity run at minimum year in and year out. EPA should review recent PJM capacity auction results for an understanding of realistically achievable natural gas dispatch. In particular, a review of the dispatched generation in 2012 would be particularly instructive, given that that year was one in which natural gas prices were at their lowest point in years and dispatched natural gas-fired capacity did not approach 70%. Further, the homogenous energy mix resulting from such explicit preference in fuel sources could leave the grid more vulnerable to supply constraints and price shocks due to unforeseen production and transmission disruption.”³⁰

G. Conclusion: EPA’s Clean Power Plan: What Difference Will It Make?

Finally, we would be remiss if we did not address the elephant in the room: despite the enormous amount of time and effort EPA invested in the Clean Power Plan, and the billions of dollars it will eventually cost utilities, contractors and consumers, will it have any significant impact on overall CO₂ emissions? The answer, sadly, is no.

Noted energy expert and author Robert Bryce has perhaps the best and most concise refutation of the proposed rule: “...EPA’s proposal aims to cut U.S. carbon dioxide emissions by about 720 million tons over the next 16 years. But that reduction will amount to a drop in the global carbon dioxide bucket. According to the new [BP Statistical Review of World Energy] numbers, in 2013 alone, global CO₂ emissions rose by 630 million tons. **In other words, in one year, global CO₂**

³⁰ Barr, Page 7.

emissions rose by nearly 90 percent of the reductions being proposed by the EPA.³¹
{Emphasis added}

Let that sink in for a moment: EPA wants to subject our industry to over a decade of burdensome regulations that will destroy tens of thousands of jobs and cripple the reliability of the energy grid – in order to achieve a reduction in emissions that will be wiped out by new CO₂ emissions in a little over a year.

Sandra Hochstetter Byrd of the Arkansas Electric Cooperative Corporation said this:

...this rule will **NOT** have **ANY** discernable effect on global CO₂ emissions nor make any difference in global climate or sea level, yet it will have significant adverse effects on electric reliability and cost. Under EPA's rule, Arkansans will be forced to reduce 5 percent of the **total** U.S. CO₂ emission reduction target to contribute a whopping "less than 1 percent" reduction in **global** CO₂ emissions by 2050, a reduction of global temperature of .016 degrees and a 1/100th-of-an-inch reduction in sea level rise. Result: **NO** global benefit from these EPA rules, **yet significant harm to the United States and to Arkansas**. EPA's rule will reduce electric reliability, raise electric rates, reduce energy flexibility and most likely encourage industries to move their factories overseas (China, India) where costs will be lower as coal will remain their dominant fuel. This will mean fewer jobs and less economic growth in the U.S. and in Arkansas.³²

The U.S. contains massive coal reserves – enough to last at least 200 years, according to many estimates. Coal accounts for more than 90% of the country's total fossil energy reserves and roughly 40% of its electric generation capacity. Given these facts, it makes no sense for EPA to create a carbon emissions standard that would effectively phase out coal-fired plants over time.

The U.S. should maintain a diversified portfolio of energy options, and that includes coal as well as natural gas. TAUC believes that both fuels can and should be important resources as we move into the 21st century. For instance, the recent discovery of huge natural gas deposits in the Marcellus and Utica shale plays has resulted in thousands of new jobs and economic security for countless families throughout Pennsylvania, West Virginia and Ohio. TAUC member contractors are also benefiting, as they are building many of the midstream processing facilities and pipelines needed to process, store and transport the vast new quantities of gas being pumped out of the ground.

However, despite our support for continued natural gas exploration, it is unwise to rely too heavily on any single source of energy and put all of the country's eggs in one basket. Like any other commodity, natural gas is susceptible to fluctuations in supply, demand and price – not to mention the specter of additional environmental and drilling regulations, which could have a serious impact on future production and price levels.

³¹ Bryce, Robert. "Numbers Don't Lie." *National Review Online* 19 June 2014:
<http://m.nationalreview.com/article/380709/numbers-dont-lie-robert-bryce>

³² Byrd, Page 16.

Another salient point that EPA completely overlooks is that *if we don't use our own coal, other countries will*. The proposed Clean Power Plan would sound a death knell for coal-fired power plants in the U.S. However, this does not mean the coal will stay in the ground. Instead of selling it to U.S. utilities, coal producers will simply export their product to foreign countries, where demand for energy is at an all-time high. U.S. coal exports increased by more than 60% from 2005 to 2011, and that percentage is only expected to increase as energy-hungry countries around the world grow at a rapid pace. Many of the countries buying our coal have far less stringent environmental regulations than the U.S. The Clean Power Plan will cause more coal to be shipped to these countries – ironically resulting in *more* air pollution, not less.

On behalf of our more than 2,000 member contractor firms – and for the sake of the future viability of the union construction and maintenance industry as a whole – TAUC respectfully but firmly calls upon EPA to go back to the drawing board. Coal-fired generation needs to be a part of America's future energy portfolio. We need an “all of the above” approach to creating a strong and reliable grid, not an “anything but” attitude that relies on unproven technologies and plans drawn up in the comfort of EPA headquarters rather than the real world.

Should the EPA ignore the warnings from our industry and proceed with the new regulations, we ask that the agency, at a bare minimum, implement the changes and modifications proposed herein.

TAUC is grateful to EPA for the opportunity to comment on this proposed rule.