

Comments by Independent Women's Forum

on The U.S. Environmental Protection Agency's Proposed Rules entitled

“New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule.”

Docket No. EPA-HQ-OAR-2023-0072

The Independent Women's Forum (IWF) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's proposed rule entitled “New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule,” (i.e. the Rule or Clean Power Plan 2.0).

Our comments explain how the proposed rule will be damaging to the economy by transforming the utility sector away from affordable, reliable sources rendering harm to the American people in the form of a diminished grid and expensive electricity. Additionally, the comments make clear this is an egregious overstep of EPA's authority, once again, and a slap in the face to the U.S. Supreme Court that disregards the recent *West Virginia v. EPA* decision. Finally, the arguments make clear that this rule will do little to improve the environment or change the trajectory of already-declining U.S. emissions.

I. Introduction

IWF is the leading national women's organization dedicated to developing and advancing policies that are more than just well-intended, but actually enhance people's freedom, opportunities, and well-being. IWF is a 501(c)(3) non-profit that works every day to engage and inform women about how policy issues impact them and their loved ones and works to expand women's options and opportunities. A guiding principle at IWF is cutting red tape so

empowered individuals can use their personal resources to improve their surrounding communities and pursue their own visions of happiness.

Successful environmental policy must balance economic growth and environmental protection. A requisite to achieving this balance is a robust and efficient energy industry. A history of technological breakthroughs in the energy industry fostered by a free and flourishing capital market is how we have significantly reduced the environmental footprint of energy development and use and become a top producer. In the process, the U.S. has achieved energy independence and stood ready to export our low-emissions energy and environmentally-friendly technologies to the rest of the world. One recent analysis projected a reduction of one billion metric tons of carbon dioxide emissions per year if we increased the development and exports of existing Liquid Natural Gas (LNG) technologies.¹ Based on CPP 2.0 projected emissions reductions,² the former approach delivers a 1 to 2.5 times greater impact without forcing Americans to deal with the derivative impacts of economy-crushing and cost-increasing regulations.

Accordingly, IWF urges the EPA to set aside its facially flawed and illegal, proposed Rule.

II. The CPP 2.0 is Illegal.

The EPA Clean Power Plan 2.0 is the latest rendition whereby appointees are prioritizing the wants of activists over tangible fulfillment of the EPA's mission and the rule of law. Under the Clean Air Act, section 111, EPA can set standards to “the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.”³ Importantly, the law makes clear these standards must be “achievable” and set based on technologies that are “adequately demonstrated.” The EPA CPP 2.0 rule fails to meet both standards.

Lack of Adequate Demonstration: The EPA proposal seeks to apply carbon capture and storage (CCS) technology as well as low-GHG hydrogen to new natural gas plants and existing coal-fired power plants. The agency admits

¹ EQT Corp., *Unleashing U.S. LNG, The Largest Green Initiative on the Planet* (2022) available at: https://www.egt.com/wp-content/uploads/2022/03/LNG_Final.pdf.

² of 832—1.05 million metric tons.

³ 42 U.S.C. § 7411(a).

that the technologies as applied are not currently available but will be by a “certain date.” While the agency has faith in this projection, the industry itself does not, and for a number of technical reasons.⁴

First, the examples the EPA cites to prove that CCS and low-GHG hydrogen are adequately demonstrated come from facilities that are materially different in both scale and design than what would be required by the rule. Additionally, the agency relies on the use of proprietary technology without any explanation of how regulated entities could acquire or develop it. Finally, the costs the EPA relies on, especially for CCS, are at odds with previous, less political assessments by the Agency itself. Mainly, the 2019 Affordable Clean Energy (ACE) Rule noted:

According to NETL, the capital costs of a CCS system with 90 percent capture increases the cost of a new coal-fired power plant approximately 75 percent relative to the cost of constructing a new coal-fired power plant without post-combustion control technology. Furthermore, the additional auxiliary load required to support the CCS system consumes approximately 20 percent of the power plant's potential generation. The NETL Pulverized Coal Carbon Capture Retrofit Database tool (April 2019) estimates that the operating costs of existing coal-fired EGUs range from 22 to 44 \$/MWh.²¹⁴ The incremental increase in generating costs, including the recovery of capital costs over a 30-year period, due to CCS range from 56 to 77 \$/MWh.²¹⁵ For reference, according to the EIA, the average electricity price for all sectors in March of 2019 was 103.8 \$/MWh.²¹⁶ About 60 percent of these latter costs (60 \$/MWh) are associated with generation and 40 percent with transmission and distribution of the electricity. Thus, the incremental increase in generating costs due to CCS by itself would equal or exceed the average generation cost of electricity for all sectors.⁵

The CPP 2.0 rule rejects this reality and suggests that any increase in costs will be largely mitigated by the availability of federal subsidies.⁶ By this method, the EPA admits there is a cost, but somehow has determined that when those costs are borne by taxpayers, they simply do not count.

⁴ Mark A. Bloomfield, *A Conversation with Jason Grumet, American Clean Power Association CEO*, American Council for Capital Formation (June 2, 2023), <https://accf.org/2023/06/02/a-conversation-with-jason-grumet-american-clean-power-association-ceo/>.

⁵ 84 Fed. Reg. 32,520, 32,545 (2019).

⁶ 88 Fed. Reg. at 33,290.

Unachievable Standards: The standard of “achievability” requires the EPA to show both technical feasibility consistent with the scale and purpose the EPA expects it to be used. The CPP 2.0 rule fails this in many ways. The proposal relies on implementing aspects that go outside the fenceline and on actions by parties beyond the scope of the rule. Specifically, the requirement of transporting and sequestering captured carbon dioxide (CO₂) as well as the production and transportation of low-GHG hydrogen make compliance contingent on actions by parties not subject to the rule itself. Another major obstacle to the achievability, ignored by the EPA’s analysis, is that both the technologies’ relative success is dependent on the development of infrastructure that has not yet been applied for, permitted, or built.

In each of the varied applications, these technologies are better characterized as emerging, rather than adequately demonstrated or technically feasible. *Sierra Club v. Costle* makes clear that emerging technologies are not the same as and do not meet adequate demonstration standards.⁷

III. The CPP 2.0 attempts to subvert the rule of law and ignore *West Virginia v. EPA*.

Similar to the original Clean Power Plan, the latest proposal attempts to take actions well beyond the legal authority Congress provided it. Nowhere in the Clean Air Act does the EPA have the authority to regulate and ultimately transition the entire energy sector. Yet, the CPP 2.0 attempts to do this very, illegal act.

The emissions limits for the rule are so strict that the majority of regulated utilities’ only path to comply is by shutting down existing generation or switching to a completely different type of power source. Further problematic, compliance is contingent on states, utilities, or other private investors building a major interstate infrastructure for CCS. As previously mentioned, this makes compliance contingent on actions by parties not regulated by the rule. It also intrudes on a state’s ability to build out local infrastructure based on a tangible need rather than forced compliance with an illegal rule thus reinstating coercive federalism.

In *West Virginia v. EPA*, the U.S. Supreme Court made clear that “[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy,’ we typically greet its announcement with a measure of skepticism.” The Court further reiterated

⁷ 657 F.2d 298 (D.C. Cir. 1981).

that when agencies undertake actions of vast economic and political significance, there is an expectation that Congress will speak clearly in assigning such a role.⁸ There is no “clear congressional authorization” for the Agency to point to with respect to the proposed CPP 2.0 rule and the agency’s attempts to once again, make generation shifting the best system of emission reduction.

IV. CPP will make Energy Scarce and Electricity More Expensive.

The CPP 2.0 is the latest rendition of President Biden’s political war on fossil fuels. As we saw with the original Clean Power Plan, the purpose was less about administering the rule of law or advancing the agency’s mission to protect human health and the environment, and more about establishing a template for control to take out policy and political foes. Unfortunately for coal, the industry was target number one. After eight years of the Obama administration working against them, mainly through the EPA, there were at least **83,000 lost coal mining jobs and 400 mines** shut down. That effort also decimated entire regions and states like West Virginia where once bustling and proud coal communities were relegated to a breeding ground for unemployment and opioid abuse. The CPP 2.0 seeks to reinstate this template for control, this time with the administration’s sights on another fundamentally important sector of the economy: natural gas.

This relentless political attack on fossil-fueled energy has very severe consequences. Coal, oil, and natural gas currently provide 80% of our daily energy needs. As we’ve already seen with the canceling of important projects and inhibiting natural gas development from Day One of the Biden administration, the price of energy has skyrocketed. This past winter, Americans were projected to spend \$14.1 billion more on winter heating bills due to poorly constructed climate policies being implemented on political timelines that are undermining reliability and adding up costs.⁹ As IWF Center Director Mandy Gunasekara has testified before Congress:

Rising energy costs and inflation have created immense financial burdens on the American people. One in six American families is currently behind on their electricity bills. The cost for an average household has risen approximately \$10,000 over the past two years.

⁸ *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014).

⁹ Mandy Gunasekara, *Policy Focus: The Painful Reality of Expensive Heat*, *Independent Women’s Forum* (February 6, 2023) available at: <https://www.iwf.org/2023/02/06/policy-focus-the-painful-reality-of-expensive-heat/>.

Everyday goods like groceries and gas are exorbitantly expensive. Beyond high costs, Americans have had to endure supply chain disruptions creating shortages of baby formula, over-the-counter cold medicine for children, women's hygiene products, and many more. These costs are squeezing the middle class and making it virtually impossible for low-income Americans to ever cross into the middle-class threshold. Most concerning, some families have been forced to choose between powering their homes or putting food on the table.¹⁰

The CPP 2.0 rule alone stands to exacerbate an already troubling outlook for the U.S. grid. But even more problematic, the proposal fails to account for the impact of other rules on the grid. Namely, the increased load on the energy grid by virtue of the Department of Transportation's rule that would force Americans to drive electric vehicles and plug-in 67% of new vehicles sold into the grid.¹¹ The regulatory landscape under Team Biden is creating a serious reliability crisis caused by poorly constructed climate policies, which is immensely avoidable and unnecessary.

V. All Pain, No Gain

For all the consequences of the CPP 2.0 proposal—increased energy costs, reduced grid reliability, diminished economic productivity, lost jobs, a disregard for the law, and intrusion on state roles—there are no real climate gains. The Heritage Foundation, using a model developed by the EPA's own researchers to quantify the climate rule, found that the overall climate impact would be less than 0.0273 degrees C temperature mitigation by 2050 and less than 0.0575 by 2100.

VI. Conclusion

When agencies become distracted by their relative missions, it comes with a series of consequences for the American people. This is especially the case at

¹⁰ Mandy Gunasekara, *Fueling Unaffordability: How the Biden Administration's Policies Catalyzed Global Energy Scarcity and Compounded Inflation*, Testimony to the United States House of Representatives Committee on Oversight and Accountability Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs (March 29, 2023) available at: https://oversight.house.gov/wp-content/uploads/2023/03/Mandy-Gunasekara-Testimony_Biden-Policy-Feed-Energy-Scarcity-and-Inflation.pdf.

¹¹ Luke Gentile, *GOP Rep. August Pfluger scorches Biden EV mandate when officials don't know the facts*, Washington Examiner (June 28, 2023) available at: <https://www.washingtonexaminer.com/news/august-pfluger-texas-ev-mandates-epa>.

the U.S. EPA. Long-term political distraction from core functions, which were prevalent during the Obama administration and have been reinstated during the Biden administration, has led to a series of preventable environmental disasters. Examples include the 2014 water crisis in Flint, Michigan where residents were exposed to high levels of lead in the water,¹² the 2015 Gold King Mine spill where mishaps by U.S. EPA contractors unleashed millions of gallons of toxic waste into the Animas River,¹³ and most recently, the East Palestine, Ohio, train derailment where the EPA's lack of leadership resulted in the creation of a giant, toxic plume that continues to plague local residents today.¹⁴

These outcomes were a consequence of diverting agency resources, interest, and talent away from fundamental duties because they had been overtaken by political pressures. Such an approach not only causes tangible harm to the American public and the environment but furthers agency distrust among the regulated community as well as disappointment among stakeholders who were promised outcomes of which the agency cannot legally nor technically deliver.

For the above-mentioned reasons, the U.S. EPA should set aside the Proposed Rule.

¹² Grist, *The EPA failed Flint. Now we know exactly how.* (July 19, 2018), available at <https://grist.org/article/the-epa-failed-flint-now-we-know-exactly-how/>.

¹³ US News & World Report, *EPA to Blame for 'Preventable' Gold King Mine Spill* (October 22, 2015), available at <https://www.usnews.com/news/articles/2015/10/22/epa-to-blame-for-preventable-gold-king-mine-s-poll-interior-dept-finds>.

¹⁴ Mandy Gunasekara, *EPA Administrator's Absence At East Palestine Train Disaster Is Inexcusable*, Independent Women's Forum (February 14, 2023) available at: <https://www.iwf.org/2023/02/14/epa-administrators-absence-at-east-palestine-train-disaster-is-inexcusable/>.