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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

ADAM TOMLINSON, REPUBLICAN STAFF DIRECTOR
DAN DUDIS, DEMOCRATIC STAFF DIRECTOR

September 10, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Dear Administrator Zeldin:

We support the Environmental Protection Agency's (EPA or Agency) proposed rule repealing power plant standards promulgated under Section 111 of the Clean Air Act (CAA).¹ These standards misinterpreted the limited authority that Congress granted under Section 111 of the CAA in an attempt to expand the Agency's authority under the CAA without clear congressional authorization. Further, the standards were unachievable, uneconomic, unreasonable, and promulgated with the intent to transform our nation's power sector contrary to the limits of Section 111's authority.

Our nation currently needs more reliable and affordable electricity to power our economy, maintain our economic competitiveness, and win the Artificial Intelligence race. The current regulations—that your proposal will repeal—put us at risk by exacerbating electric reliability threats and spiking energy costs borne by American families and businesses.

The warning signs are clear—the reliability of our electric grid is in danger. According to a recent Department of Energy (DOE) report,² the U.S. could face huge power shortfalls in 2030, as 104 GW of baseload power is set to retire in the next five years. The report notes that with projected load growth and retirements, the risk of power outages is set to increase one hundred-fold by 2030.

Our nation's grid experts all share concerns about grid reliability. Members of the Federal Energy Regulatory Commission (FERC), the Chief Executive Officer of the North American Electric Reliability Corporation, and the Regional Transmission Organizations PJM, SPP, MISO and ERCOT have all agreed that we are heading towards a reliability crisis that will be made worse by policy-driven plant retirements, and that this rule, in particular, puts at risk their ability to maintain resource adequacy and ensure reliability in their respective regions.³

¹ Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units 90 Fed. Reg. 25752, June 17, 2025, <https://www.federalregister.gov/documents/2025/06/17/2025-10991/repeal-of-greenhouse-gas-emissions-standards-for-fossil-fuel-fired-electric-generating-units>

² U.S. Department of Energy, *Reliability*, <https://www.energy.gov/topics/reliability> (last accessed September 10, 2025).

³ Speaking about the FERC Technical Conference, former FERC Chairman Mark Christie stated, "The testimony we received about the effect of the EPA power plant rule made it clear that this rule could wreak havoc on the electric

As such, in addition to bringing the EPA's regulations back in line with the Agency's legal authority, your proposal to repeal the Biden Administration's rule is urgent for energy providers, electric utilities, and the American people.

Your proposed rule would repeal standards that unmistakably violate the statute and ignore the Supreme Court's ruling in *West Virginia v. EPA*, 597 U.S.697 (2022). The major questions doctrine requires that "a clear statement is necessary for a court to conclude that Congress intended to delegate authority of this breadth to regulate a fundamental sector of the economy."⁴ The CAA is devoid of any such "clear statement" that would remotely justify these standards.

We appreciate the Agency taking seriously its legal responsibility to carefully consider the scope of its authority under Section 111 of the CAA. Under previous administrations, the EPA attempted to sidestep the statutorily required determination of significant contribution prior to regulating greenhouse gases (GHG) from stationary source categories. EPA also attempted to use Section 111 to claim a broad grant of authority for the Agency to require emission reduction systems for GHGs from the power sector that were not adequately demonstrated and unachievable. Relying on exceptionally novel interpretations of Section 111 of the CAA, the EPA issued rules seeking to transform the electric power sector contrary to the Supreme Court's holding in *West Virginia v. EPA*.

The Best System of Emission Reduction Does Not Meet the Legal Requirements Under the Clean Air Act

Section 111 of the CAA requires the best system of emission reduction (BSER) to be "adequately demonstrated."⁵ The previous, flawed regulation would establish carbon capture and storage (CCS) technologies as the BSER for most standards under the rule, despite being wholly infeasible and not adequately demonstrated. You are correct to repeal those requirements.

The Biden Administration's Clean Power Plan (CPP) 2.0 rulemaking included a list of "successful applications" of CCS for fossil fuel-fired power plants as the means to argue that

grid. The testimony we received made it clear that virtually no coal power plant in America will be able to comply with the rule. Joe Goffman at EPA admitted to me under questioning that EPA had not even evaluated whether coal or gas plants would even be able to finance their compliance costs. The biggest threat facing grid reliability today is that we are seeing a wave of retirements of dispatchable resources that we need in order to keep the lights on. At the same time, we are seeing dramatic increases in the demand for electricity. This power plant rule is going to greatly exacerbate the retirement of dispatchable resources at the same time that demand is skyrocketing;" *Full Committee Hearing to Examine the Reliability and Resiliency of Electric Services in the U.S. in Light of Recent Reliability Assessments and Alerts, Before the US Senate Committee on Energy and Natural Resources*, 118th Cong. (June 1, 2023); PJM, *PJM Statement on Newly Issued EPA Greenhouse Gas and Related Regulation*, <https://www.cooperative.com/programs-services/government-relations/regulatory-issues/Documents/111/20240508-pjm-statement-on-the-newly-issued-epa-greenhouse-gas-and-related-regulations.pdf>; Southern Power Pool, *Statement on the Recent EPA Greenhouse Gas Emissions Rule*, <https://www.cooperative.com/programs-services/government-relations/regulatory-issues/Documents/111/SPP%20Statement%20-%20EPA%20Final%20GHG%20Rule.pdf>; *Full Committee Hearing to Conduct Oversight of FERC Before the US Senate Committee on Energy and Natural Resources*, 118th Cong. (May 4, 2023) (Testimony of Comm'r James Danly); *State of West Virginia, et al. v. United States Environmental Protection Agency, et al.*, 597 U.S. (2022) [https://www.cooperative.com/programs-services/government-relations/regulatory-issues/Documents/111/ERCOT%20\(Rickerson\)%20Declaration.pdf](https://www.cooperative.com/programs-services/government-relations/regulatory-issues/Documents/111/ERCOT%20(Rickerson)%20Declaration.pdf).

⁴ *West Virginia v. EPA*, 597 U.S.697(2022).

⁵ Clean Air Act § 111(a)(1), 42 USC § 7411(a)(1).

CCS can serve as the BSER for its standards. However, none of the projects on that list would meet the EPA’s requirement that 90 percent of carbon emissions be captured or otherwise show that the technology is adequately demonstrated.

In addition to the capture equipment itself, CCS requires significant infrastructure, beyond the fence line of a power plant, to support deployment of the technology. Given the existing data on the timeline to permit Class VI storage wells and CO₂ pipelines, it is wholly unrealistic that the design, siting, permitting, and construction of the necessary infrastructure could be completed by the 2032 compliance deadline. The Biden Administration’s proposal ignored comments received as part of its interagency review that expressed concerns about the adequate demonstration of CCS.⁶

Real world experience further confirms that imposing CCS requirements on coal-fired power plants is unachievable. The EPA’s 2015 New Source Performance Standards (NSPS) required CCS for new coal plants. By requiring coal plants to install and operate CCS, the EPA has contributed to a de facto ban on new coal-fired power plants. The United States has not built a single new coal-fired power plant since that 2015 NSPS regulation, despite the addition of 458 GW of new coal-fired power capacity around the world over that same time period.⁷ Imposing a severely more stringent requirement to install CCS with a 90 percent capture rate for existing coal plants and new natural gas-fired power plants will have the same effect.

Additionally, this “system” sets the standard at a severely low level, such that it would force a nationwide transition away from fossil-fuel fired power generation, constituting generation shifting. This is in direct conflict with *West Virginia v. EPA*, which definitively found that Congress never granted EPA the authority to require generation shifting under Section 111 of the CAA.

Section 111 Requires a Finding of Significant Contribution Before Issuing Greenhouse Gas Emission Standards for a New Source Category

We believe the EPA’s proposal correctly recognizes the requirement in Section 111 of the CAA to assess the threshold for a cause or contribution finding. It is appropriate and in line with the best reading of the statute that the Agency evaluate whether to make a significant contribution finding prior to issuing new source category emission standards for an air pollutant not previously regulated within such source category under Section 111 of the CAA, and we appreciate the Agency’s due diligence in ensuring compliance with all requirements under the CAA.

Section 202(a) of the CAA requires the EPA to regulate the emissions of air pollutants “from any class or classes of new motor vehicles or new motor vehicle engines,” if the Agency finds that they “cause or contribute to, air pollution which may reasonably be anticipated to endanger

⁶ Letter from Representative James Comer to Environmental Protection Agency Administrator Michael S. Regan (December 15, 2023), <https://justthenews.com/sites/default/files/2025-06/Letter-to-EPA-Unmasking-Comments.pdf>.

⁷ University of Maryland School of Public Policy, *State of Global Coal Power 2023*, https://cgs.umd.edu/sites/default/files/2023-11/file_CGS%20State%20of%20Global%20Coal_11.30.pdf.

public health or welfare.”⁸ In 2009, the Obama Administration’s EPA issued endangerment and cause or contribute findings for GHGs pursuant to Section 202(a) of the CAA.⁹ In this 2009 rulemaking, the Agency specifically considered the differences between Section 202(a) and 111(b):

The use of the term “contribute” clearly indicates a lower threshold than the sole or major cause. Moreover, the statutory language in CAA section 202(a) does not contain a modifier on its use of the term contribute. Unlike other CAA provisions it does not require “significant” contribution. See, e.g., CAA sections 111(b); 213(a)(2), (4). To be sure, any finding of a “contribution” requires some threshold to be met; a truly trivial or de minimis “contribution” might not count as such. The administrator therefore has ample discretion in exercising her reasonable judgment in determining whether, under the circumstances presented, the cause or contribute criterion has been met.

Despite explicitly considering the differences in the cause or contribute thresholds required under Sections 202(a) and 111(b) and acknowledging that 111(b) has a higher threshold for a cause or contribution finding than 202(a), the Obama EPA subsequently issued first-of-a-kind GHG standards for the power sector while asserting that it did not have to make a finding that GHG emissions from the power sector significantly contribute to dangerous air pollution.

In 2015, the EPA combined two previously existing source categories (steam generators and combustion turbines) into one new source category (fossil fuel-fired electric generating units) for the purpose of issuing first-of-a-kind regulations on power sector GHG emissions. The CAA requires that the Administrator shall include a source category on the list under Section 111(b)(1)(A), if “it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”¹⁰ The creation of a new source category requires a finding that it contributes significantly to dangerous air pollution. Further, a new source category that was created solely to set first-of-a-kind GHG emission standards unquestionably requires a finding that GHG emissions from that source category contribute significantly to dangerous air pollution.

CAA Section 111(b)(1)(A) and 111(b)(1)(B) work in tandem and jointly direct the EPA to establish standards for air pollutants that contribute significantly to dangerous air pollution. Section 111(b)(1)(A) requires the Administrator to develop a list of source categories that contribute significantly to dangerous air pollution, and Section 111(b)(1)(B) directs the Administrator to establish standards of performance to address said dangerous air pollution. It is longstanding practice under the CAA that EPA promulgates standards for emissions of air pollutants on a pollutant-by-pollutant basis within a source category. The EPA, in prior decisions, has chosen not to regulate certain air pollutants under Section 111 of the CAA due to insignificant impact or lack of effective systems of emission reduction. Similarly, it is consistent

⁸ Clean Air Act § 202(a)(1), 42 USC 7521(a)(1).


⁹ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act 74 Fed. Reg. 66496.

¹⁰ Clean Air Act § 111(b)(1)(A), 42 USC 7411(b)(1)(A).

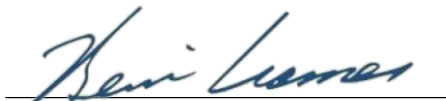
with the statute that the EPA's authority to regulate emissions of any air pollutant, including GHG emissions, is limited to air pollutants that contribute significantly to dangerous air pollution from the applicable source category.

The repeal of these standards is the first step on a path to improved energy affordability and securing the reliability of our electric grid. We appreciate your leadership to restore American energy dominance and we request the EPA expeditiously finalize the proposed rule as a central effort to achieve that goal.

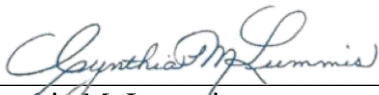
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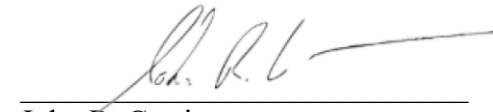
Shelley Moore Capito
Chairman
Environment & Public Works Committee



Kevin Cramer
United States Senator



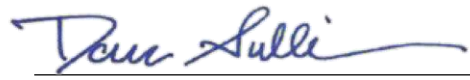
Cynthia M. Lummis
United States Senator



John R. Curtis
United States Senator



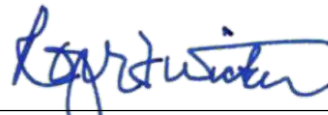
Lindsey O. Graham
United States Senator



Dan Sullivan
United States Senator



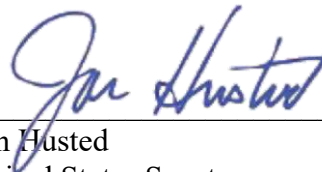
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