

[Union of Concerned Scientists

February 26, 2018

To: Administrator Scott Pruitt

Docket ID No. EPA-HQ-OAR-2017-0545

State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Vol. 82, Federal Register, No. 248, Thursday, December 28, 2017. Advance Notice of Proposed Rulemaking. Environmental Protection Agency: 40 CFR Part 60.

U.S. Environmental Protection Agency, EPA Docket Center, Mail Code: 28221T, 1200 Pennsylvania Ave, NW, Washington, DC 20460.

Submitted directly to *Regulations.gov*

Administrator Pruitt:

The Union of Concerned Scientists (UCS) condemns the Environmental Protection Agency's (EPA) cynical misuse of the rulemaking process in its recent *Advance Notice of Proposed Rulemaking on State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units* (ANPR). Under your direction, the agency is essentially wielding the ANPR as a stall tactic, seeking comment on questions it already knows the answer to and contemplating issues that an extensive, robust, and years long rulemaking process has already resolved—all while simultaneously seeking to repeal the Clean Power Plan (CPP), the nation's first-ever limits on power plant carbon emissions. In the process, the agency is wasting taxpayer dollars and time we do not have in the fight to forestall the very worst of climate impacts. We lodge our exceptions to this effort here, as well as elsewhere in the docket in more detailed comments submitted jointly with other environmental and health organizations. We will also file separate comments strongly opposing the proposed repeal of the CPP.

UCS puts rigorous, independent science to work to solve our planet's most pressing problems. We work on behalf of our more than 500,000 supporters and network of over 20,000 scientists to advance public awareness of both the science of climate change and the solutions available to help lower emissions and mitigate impacts. UCS has been deeply engaged in the effort to shape federal roles and responsibilities related to climate change, including most recently with modeling analysis¹ and technical comments^{2,3,4} in support of the CPP. As a result, we are intimately familiar with the existing record, and the diligent,

¹ Cleetus, R., S. Clemmer, J. Deyette, S. Mullendore, and J. Richardson. 2014. *Strengthening the EPA's Clean Power Plan*. Cambridge, MA: Union of Concerned Scientists. Online at www.ucsusa.org/sites/default/files/attach/2014/10/Strengthening-the-EPA-Clean-Power-Plan.pdf, accessed on January 9, 2018.

² Union of Concerned Scientists. 2014. *Technical comments on the Environmental Protection Agency (EPA) Proposed Rule: Carbon Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*. Cambridge, MA. Online at www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-33893, accessed on January 9, 2018.

³ Union of Concerned Scientists. 2015. *Technical comments on the Clean Energy Incentive Program (CEIP) Design and Implementation*. Cambridge, MA. Online at www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2015-0734-0097, accessed on January 9, 2018.

⁴ Union of Concerned Scientists. 2016. *Technical comments on the Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations*. Cambridge, MA. Online at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0199-0436>, accessed on January 9, 2018.

meticulous effort by the agency as it worked to finalize the CPP. The supporting record makes abundantly clear the charade that is the current ANPR.

Through these comments we also direct the agency to incorporate into this docket the millions of comments filed during the rulemaking process for the CPP, the vast majority of which were in strong support of the approach adopted by the EPA in that case. We urge the EPA to respect the existing record and move to immediately implement the existing CPP.

The agency's requirement to regulate greenhouse gas emissions from power plants is clear, and its process for doing so by way of the CPP has been painstakingly articulated. The EPA's 2009 Endangerment and Cause or Contribute Findings, together with the 2007 Supreme Court ruling in *Massachusetts v. EPA*, establish the clear right and obligation of the EPA to limit harmful heat-trapping emissions from power plants and other major sources under the Clean Air Act. The 2015 Clean Power Plan was years in the making. Meanwhile, the serious risks our nation faces from climate change have become even more evident, as highlighted in the 2017 Climate Science Special Report prepared by the United States Global Change Research Program and endorsed by thirteen US federal government agencies including the EPA.⁵ To set the clock back yet again and delay the implementation of a final rule is reprehensible and in direct contradiction to the agency's statutory obligations.

This ANPR displays a blatant disregard for scientific facts and the legal record, and reveals an agency in dereliction of its statutory requirements to protect human health and the environment. Further:

- The ANPR is itself based on a faulty legal premise, prejudging the outcome of an ongoing rulemaking process. In the agency's recent Repeal Proposal⁶, the EPA outlined an inappropriately and unreasonably narrow interpretation of the best system of emission reduction (BSER). Now, the EPA is continuing to advance that interpretation by tightly constraining requests for information in the ANPR to implementation pathways focused on heat rate improvements. However, the proposed repeal is still ongoing, the narrower interpretation has not been legally or scientifically justified, *and* the agency has chosen to omit multiple additional proven pathways that could still conform with this approach. As a result, the record will necessarily be rendered inaccurate and incomplete.
- Within the ANPR, the EPA issues several requests for comment suggesting an overarching motivation that is not rooted in limiting power sector carbon emissions, but instead in finding ways to limit the agency's own role and responsibilities on this front. It is especially troubling that the ANPR goes as far as to take comment on *whether* the EPA should regulate carbon dioxide emissions from power plants at all—a stunning question given that power plants are one of the largest sources of these harmful emissions in the US. In addition, the primary focus on heat rate efficiency improvements at individual power plants would at best limit emissions reductions to just a few percentage points—and could in fact drive them higher—and is completely at odds with the significant opportunities to lower emissions by taking a systems-based approach that reflects the totality of how the power sector currently operates.

⁵ U.S. Global Change Research Program (USGCRP). 2017. *Climate Science Special Report: Fourth National Climate Assessment, Volume 1*. Wuebbles, D.J., D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart and T.K. Maycock (Eds.) U.S. Global Change Research Program, Washington, DC, USA. 470 pp, doi: 10.7930/J0J964J6. Online at <https://science2017.globalchange.gov/>

⁶ U.S. Environmental Protection Agency (EPA). 2017. *Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Source: Electric Utility Generating Units: Proposed Rule*. 82 Fed. Reg. 48,035. Online at www.gpo.gov/fdsys/pkg/FR-2017-10-16/pdf/2017-22349.pdf.

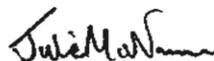
- The ANPR points the agency in the exact wrong direction for progress on the regulation of greenhouse gas emissions. Since the CPP was finalized, the scale and scope of climate impacts have become ever clearer, while at the same time the costs of compliance mechanisms—e.g., deploying solar photovoltaics and wind turbines and investing in energy efficiency measures—have continued to drop significantly and market factors continue to drive a shift away from coal to cleaner generating sources. Accelerating this clean energy transition via a strong power plant carbon rule will bring significant near and long-term health benefits to communities around the country while contributing to global efforts to limit climate change. As a result, not only should the EPA be working to implement the CPP as opposed to repealing it and slow-walking its replacement, it should be actively striving to *strengthen* the regulations and implement them as expeditiously as possible to reflect the rapidly improving fundamentals of power sector emission reductions and the overwhelming net benefits for the public.
- Finally, we urge the Trump administration to adopt real and serious measures to support a just transition for coal miners and coal-dependent communities, instead of cynically using their plight as a pretext to repeal or significantly weaken public health safeguards like the CPP. Market trends such as cheap natural gas and the falling costs of renewable energy—not protective standards—are the primary driver for our nation’s transition away from coal⁷ and it is abundantly clear that this shift will continue. The rhetoric that repealing the CPP will bring back coal mining jobs is simply not true—so it is incumbent on the administration to stop perpetuating that falsehood and instead actually implement substantive and well-resourced transition policies and programs to help communities.

This ANPR is an abdication of the EPA’s critical role, and indeed your specific charge as EPA Administrator, to defend public health and the environment. Administrator Pruitt, we urge you to right the course of the EPA, acknowledge and be guided by the best available science, abandon this unnecessary and inappropriate rulemaking sideshow, and immediately move to implement the existing CPP. If at all a replacement rule is to be proposed and implemented, that replacement must be significantly stronger than the existing CPP based on legal, scientific, and technological facts as outlined above, and it must be implemented in a clear and expeditious timeframe. To do otherwise would be to elevate the narrow near-term interests of fossil fuel companies at the expense of the health and well-being of Americans, now and in the future.

On behalf of the Union of Concerned Scientists:



Rachel Cleetus
Lead Economist and
Climate Policy Manager



Julie McNamara
Energy Analyst

⁷ Richardson, J., S. Gomberg, J. McNamara, and J.C. Kibbey. 2017. *A Dwindling Role for Coal: Tracking the Electricity Sector Transition and What It Means for the Nation*. Cambridge, MA: Union of Concerned Scientists. Online at www.ucsusa.org/clean-energy/coal-and-other-fossil-fuels/coal-transition, accessed February 24, 2018.