

February 26, 2018

Administrator Scott Pruitt  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

*Submitted electronically via Regulations.gov*

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

Dear Administrator Pruitt:

The Alliance for the Great Lakes, Environmental Law & Policy Center, Hoosier Environmental Council, Illinois Environmental Council, Iowa Environmental Council, Michigan Environmental Council, and Ohio Environmental Council (“Commenting Organizations”) respectfully submit these comments on the U.S. Environmental Protection Agency’s (“EPA”) Advance Notice of Proposed Rulemaking (“ANPRM”) regarding regulation of greenhouse gas (“GHG”) emissions from existing electric utility generating units. Commenting Organizations are environmental nonprofits in the Great Lakes and Midwest Region that work to improve public health and environmental quality and to protect our natural resources. Climate change is already affecting public health, agriculture, and air and water quality in our region. It is a matter of grave concern to our present and future health, economy and quality of life. Developing the abundant renewable energy and energy efficiency resources in our states can address the threat of climate change while also providing significant benefits to our economy and communities.

The Commenting Organizations will make four points in response to this ANPRM. First, EPA has a legal obligation to regulate emissions of carbon dioxide from fossil fuel-fired power plants and if the Clean Power Plan is repealed, it must be replaced. Second, any replacement rule must comply with the Clean Air Act and establish performance standards based on the Best System of Emission Reduction (“BSEER”). Third, the ANPRM is based on an inappropriately narrow interpretation of BSEER for the power sector. And fourth, a replacement rule must be based on updated data about the power industry, harms from climate change, cost of emission reduction, and benefits from the use of cleaner technologies and reduced emissions.

This ANPRM is premised on the assumption that EPA will finalize its proposal to repeal the Clean Power Plan. On or before April 26, Commenting Organizations expect to submit comments on that proposal. This letter should not be taken as acceptance of or acquiescence to repeal, but as initial input to EPA on the ANPRM based upon the timing of public comment periods.

The Clean Power Plan is one of the most significant public health and environmental programs ever promulgated by EPA. It was developed through an unprecedented outreach effort that provided opportunity for meaningful input from a very broad range of stakeholders and resulted in a carefully crafted final rule with modest costs and immense public health and environmental benefits. It laid out flexible paths for states to work together to achieve the targets without increasing electricity costs unreasonably or threatening grid reliability. If it had been allowed to

go into effect, it would have provided regulatory certainty to the power industry for more than a decade into the future, and reduced air pollution by millions of tons.

Data from the Energy Information Administration (“EIA”) and Lazard’s Levelized Cost of Energy Analysis show that the power industry has moved in exactly the direction EPA projected in the Clean Power Plan and has done so faster than projected and at lower cost. Costs of natural gas and zero-emitting renewable energy (wind and solar) are significantly lower than EPA predicted in 2015. In fact, Lazard’s analysis shows wind energy in the Midwest to be the lowest cost source of new generation, even without federal tax incentives or subsidies. The result is that 35 states are already well on their way to meeting the targets established in the Clean Power Plan.

Instead of implementing this common sense standard, however, EPA has refused to defend it in court and is using a stay of litigation to move on its plan to repeal and replace the rule. Legal challenges to the Clean Power Plan have been fully briefed and argued before the D.C. Circuit Court, and EPA has not raised in its proposed repeal any issue that has not been put before that Court. However, EPA and the Department of Justice have asked the Court not to act—not to decide questions that could resolve issues that will surely be raised anew if EPA repeals the Clean Power Plan. EPA is inappropriately taking advantage of a stay put in place by the U.S. Supreme Court that contemplated an orderly and relatively timely appeal process.

The Midwest is a microcosm of the nation, demonstrating both the monumental problem that the Clean Power Plan helps to solve, and the clean energy solutions that create jobs and are good for the environment. Midwestern states are experiencing in real time the problems that the Clean Power Plan was designed to solve, and these harms will only increase in the coming decades.<sup>1</sup> Climate change contributes to more extreme weather events, including more severe and/or prolonged heat waves, droughts, storms, and flooding. The increasing heat will have not only significant direct health impacts, but also negative impacts from increased humidity and smog, greater spread of disease vectors, and reduced availability of drinking water. Shifting climate zones and changing weather patterns will affect agriculture and allow disease-bearing pests to become more widespread.

Impacts to the Great Lakes are especially concerning: water levels are predicted to decrease, while water temperatures rise, increasing the likelihood and severity of toxic algal blooms that kill fish and poison drinking water. Climate change will also affect the range and distribution of aquatic species, increase opportunities for invasive species, and lead to reduced beach health. And more severe storms will lead to more polluted run-off entering the lakes. The Clean Power Plan, by providing a clear path for greenhouse gas emission reductions from the U.S. power sector, reduces the U.S.’s overall greenhouse gas emissions, which in turn will, in time, help to mitigate the overall impact of anthropogenic climate change.

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<sup>1</sup> See, e.g., *Midwest*, National Climate Assessment, <https://nca2014.globalchange.gov/highlights/regions/midwest#intro-section> (last visited Jan. 24, 2018); *Confronting Climate Change in the U.S. Midwest*, Union of Concerned Scientists, [https://www.ucsusa.org/global\\_warming/science\\_and\\_impacts/impacts/climate-change-midwest.html#.Wmjs8HIG3IU](https://www.ucsusa.org/global_warming/science_and_impacts/impacts/climate-change-midwest.html#.Wmjs8HIG3IU) (last visited Jan. 24, 2018); Great Lakes Integrated Sciences Assessment, *Climate Change in the Great Lakes Region*, [http://glisa.umich.edu/media/files/GLISA\\_climate\\_change\\_summary.pdf](http://glisa.umich.edu/media/files/GLISA_climate_change_summary.pdf) (June 18, 2014).

The Midwest region has more coal-fired power plants than any other region of the country, and so our residents bear the full range of harms from the pollution—to air, land and water—that comes with coal-fired electric generation. However, the Midwest also demonstrates the benefits and possibilities of the clean energy economy. The Midwest contains an abundance of renewable energy resources, and states are already taking advantage of these resources and demonstrating the feasibility of increased reliance on renewable energy and energy efficiency. For example, Iowa is third in the nation for installed wind capacity and generates over 36% of its electricity from wind power, a greater percentage than any other state. Illinois recently passed legislation that is predicted to create approximately 3,000 MW of new solar and 1,200 MW of new wind by 2030 and calls for significant expansion of energy efficiency programs. During the first quarter of 2017, solar energy capacity in Minnesota increased by 80%.

Increased development of renewable energy and energy efficiency not only leads to cleaner air and significant health benefits, but also creates jobs and helps drive the economy. In Minnesota from 2015 to 2016, renewable energy jobs in the state increased by 16%. A recent analysis of Department of Energy jobs data found that Indiana, Wisconsin, Michigan, and Ohio all have “vastly” more jobs in the clean energy industry than they do in the fossil fuel industry.<sup>2</sup> As detailed in ELPC’s Clean Energy Business Supply Chain Reports for Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin, there are hundreds of businesses in the Midwest that employ thousands of workers in the clean energy sector:<sup>3</sup>

- Illinois has over 450 companies engaged in the clean energy industry supply chain, including 290+ in the solar industry supply chain, 200+ in the wind industry supply chain, 130+ in the geothermal industry supply chain, and 75+ in the energy storage industry supply chain;
- Indiana has over 60 businesses engaged in the solar and wind energy industry supply chains, and nearly 4,000 people are employed in those industries;
- Iowa is home to 75 companies in the wind industry supply chain, 47 companies in the solar industry supply chain, and 4,000 people working in these industries;
- Michigan has 187 businesses supplying the solar industry, 133 supplying the wind industry, and 19 supplying the energy storage industry;
- Minnesota has 82 companies engaged in the solar industry supply chain and 49 in the wind industry supply chain;
- Ohio is home to 207 businesses in the solar industry supply chain and 134 in the wind industry supply chain; and
- Wisconsin has 500 companies in the wind and solar supply chains, with 6,800 people employed in those industries.

ELPC’s reports were published between 2015 and 2017, and other sources show even higher numbers. For example, Clean Jobs Midwest’s 2017 report found that Iowa had over 8,000 wind

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<sup>2</sup> Sierra Club, *Report: Clean Energy Jobs Overwhelm Coal, Oil & Gas in 41 States and D.C.*, <https://www.docdroid.net/G6njmYC/sierra-club-clean-energy-jobs-report-final-1.pdf> (last visited Jan. 31, 2018).

<sup>3</sup> *Clean Energy Business Supply Chain Reports*, ELPC, <http://elpc.org/2015-clean-energy-supply-chain-reports> (last visited Jan. 24, 2018).

and solar jobs, and Indiana had nearly 5,000.<sup>4</sup> The same report listed both Ohio and Michigan each as having over 10,000 combined wind and solar jobs.

These companies are adding value to the communities in which they operate, through local job creation, support to the local tax base, and positive investments in the residential and business infrastructure. As a nation, we should build upon our successes in the clean power sector and take advantage of the continuing decline in costs of renewable energy and energy storage technology when determining the best way to meaningfully regulate carbon emissions. In fact, there is growing evidence that a large number of states are already on track to meet their carbon emission reduction goals, with an analysis by the Rhodium Group in fall 2017 finding that 25 states are likely to beat their goals, and another 10 states are close to hitting their targets.<sup>5</sup> This year, new information from the EPA shows that the energy sector as a whole has already made 75% of the emission reductions required by the Clean Power Plan by 2030.<sup>6</sup> These states have been able, and are continuing, to make significant carbon emission reductions precisely through “beyond the fenceline” measures, including increased renewable energy and energy efficiency and decreased reliance on coal generation, that the EPA now seeks to exclude from its determination of the best system of emission reduction.

Commenting Organizations wish to make four simple points in response to this ANPRM and about any rulemaking to replace the Clean Power Plan.

**1. If repealed, the Clean Power Plan must be replaced; EPA is required to regulate emissions of carbon dioxide from fossil fuel-fired utilities.** EPA has an obligation under the Clean Air Act to regulate greenhouse gases from fossil fuel-fired power plants, the largest stationary source of GHG emissions, accounting for over 1,800 million metric tons of carbon dioxide emissions in 2016, about 35% of the U.S.’s total energy-related carbon dioxide emissions. EPA’s 2009 Endangerment Finding, which has been affirmed multiple times by federal courts, triggers this obligation. And yet nearly 20 years after states and organizations brought the petition to U.S. EPA that resulted in the Endangerment Finding, fossil fuel-fired power plants are still not subject to regulations that require them to reduce their GHG emissions.

**2. A replacement rule must meet the requirements of the Clean Air Act and Section 111(d) and establish goals based on the Best System of Emission Reduction.** Section 111(d) requires EPA to determine and establish performance standards for existing fossil fuel-fired power plants based on 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.” 42 U.S.C. § 7411(a)(1). Notably, the Clean Air Act does not limit determination of BSER to specific technologies that can be implemented at regulated facilities; it requires EPA to take a broader look at the best

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<sup>4</sup> Clean Jobs Midwest 2017, <https://www.cleanjobsmidwest.com/wp-content/uploads/2017/09/CJM-2017-All-ExecSum-pdf> (last visited Feb. 23, 2018).

<sup>5</sup> Brad Plumer & Nadja Popovich, *How Will the Clean Power Plan Repeal Change Carbon Emissions for Your State?*, New York Times, <https://www.nytimes.com/interactive/2017/10/10/climate/clean-power-plan-emissions-your-state.html> (Oct. 10, 2017).

<sup>6</sup> *Ongoing Power Sector GHG Cuts Could Frustrate Pruitt’s CPP Agenda*, Inside EPA, <https://insideepaclimate.com/daily-news/ongoing-power-sector-ghg-cuts-could-frustrate-pruitts-cpp-agenda> (Feb. 8, 2018).

“system” for emission reductions, taking into account the specific characteristics of the industry being regulated and the need to achieve reductions of harmful air emissions.

**3. The ANPRM takes an inappropriately narrow view of BSER for the utility industry.**

The ANPRM lays out an impermissibly narrow interpretation of BSER for the utility industry. When determining the best system of emission reductions in this context, EPA must not limit the realm of possibilities for consideration to only those actions that can be taken at the regulated facility. The reality of the electricity sector is such that generation shifting and reducing overall generation is the most effective and cost-efficient system for creating significant and timely emission reductions from fossil fuel-fired electric generating units. Industry actions since 2015 only reinforce that utilities are using natural gas and renewable energy as integral strategies to manage their resources and emissions. But the ANPRM takes its narrow view of BSER even further by not considering all the approaches fossil fuel-fired power plants could do even if limited to within their own fencelines—for example, co-firing of natural gas or cogeneration.

**4. Any replacement rule must use updated data about the industry, the threat of climate change, the costs of controls, and the benefits.**

If EPA moves forward with a replacement rule, it must consider updated information and build a new record on which to base its rule. EPA is required to consider and fully address comments that raise new information or policy arguments. *St. James Hosp. v. Heckler*, 579 F. Supp. 757, 765 (N.D. Ill. 1984), *aff'd*, 760 F.2d 1460 (7th Cir. 1985) (quoting *National Resources Defense Council, Inc. v. U.S. Nuclear Regulatory Commission*, 547 F.2d 633, 646 (D.C.Cir.1976), *rev'd on other grounds by Vermont Yankee Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978) (in promulgating rule, agency must address “significant information [that] has been brought to its attention” and “substantial issues of policy or gaps in its reasoning raised”). For example, costs of wind and solar power have decreased since 2015, as noted above, which must be considered in a new BSER determination. EPA must also explain in detail why it is rejecting the Clean Power Plan. *Action on Smoking & Health v. C.A.B.*, 699 F.2d 1209, 1216 (D.C. Cir. 1983) (when replacing a regulation, agency “must address, with some precision, the major comments received and, of course, explain why the old regulation is no longer desirable”; “[t]hese requirements . . . ensure that . . . changes reflect reasoned consideration of competing objectives and alternatives”).

In conclusion, EPA has an affirmative statutory obligation to regulate carbon emissions and to protect the public health. Through years of work and stakeholder input, the EPA developed the Clean Power Plan, a legally sound, common sense regulation that is critical to protecting the public health and welfare of the Midwest and the country. The EPA’s actions to repeal and replace the Clean Power Plan will result in more greenhouse gas emissions in future years, and will likely reduce utility investments in energy efficiency and renewable energy, which will lead to greater reliance on electric generation that is more harmful to public health and the environment. Furthermore, Clean Power Plan repeal and replacement will increase regulatory uncertainty for the electricity sector. The undersigned organizations urge EPA to preserve the Clean Power Plan. If, however, it finalizes repeal of that rule, it must move forward to replace it with a rule based on current data and projections that determines the Best System of Emission Reduction for existing fossil fuel-fired power plants based on consideration of all reasonable technologies and approaches, including those considered to be “beyond the fenceline.”

Sincerely,

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