

Dissenting Views on H.J. Res. 72

Finalized by the Environmental Protection Agency (EPA) on August 3, 2015, the “Clean Power Plan” rule establishes emission guidelines for states to follow in developing plans to control carbon pollution from existing coal-fired and natural gas-fired power plants under section 111(d) of the Clean Air Act.¹ That same day, EPA also finalized a rule limiting carbon pollution from new, modified, and reconstructed power plants under section 111(b) of the Clean Air Act.²

H.J. Res. 72 is part of the Republicans’ ongoing attack on EPA’s Clean Air Act authority to cut carbon pollution and prevent dangerous climate change. If the resolution is enacted, then EPA would not be able to reissue the Clean Power Plan or any rule that is substantially the same.³ This is particularly important since it would block this administration, or any future administration, from taking meaningful action to curb carbon emissions from power plants.

INACCURACIES IN THE MAJORITY’S REPORT

The majority’s report includes a number of false statements, inaccuracies, and exaggerations regarding the Clean Power Plan.

Cooperative Federalism

First, the majority’s report claims that the Clean Power Plan represents “an unprecedented attempt by the EPA to change the way electricity is generated, transmitted and consumed in the United States by asserting new regulatory authorities over state electricity decision-making.”⁴ They further argue that “states that fail to submit a satisfactory plan the electric generating units in those states would become subject to a ‘Federal Plan’ under which the agency has proposed it would implement a federal regulatory cap-and-trade program.”⁵

However the claims of EPA taking over a state’s electricity sector are hyperbolic and ignore the history of the Clean Air Act. Under current law, EPA sets the emissions reduction goals under section 111(d) and it is up to the states to decide how to best achieve these reductions. States are not required to develop or implement their own plans for reducing carbon

¹ U.S. Environmental Protection Agency, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 80 Fed. Reg. 64662 (Oct. 23, 2015) (Final Rule) (online at www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22842.pdf) (hereinafter *Clean Power Plan*).

² U.S. Environmental Protection Agency, *Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units*, 80 Fed. Reg. 64510 (Oct. 23, 2015) (Final Rule) (online at www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf).

³ 5 U.S.C. § 801(b).

⁴ Majority Report at 2.

⁵ *Id.* at 3.

emissions from existing power plants, but EPA is required to step in with a federal plan when a state does not implement its own. The Clean Air Act's use of cooperative federalism ensures that environmental risks are addressed, either by state action or by federal action where a state fails to act. Congressional action is not needed to provide a safe harbor for states that cannot—or will not—comply with the requirements of the Clean Power Plan.

Further, environmental groups have noted that:

Regulating air pollution that affects the whole nation ... lies at the heart of Congress' regulatory powers, and cooperative federalism arrangements addressing such matters are familiar and constitutionally unproblematic... If State Petitioners object to the Clean Power Plan, they can decline to participate and leave regulation of power plants' carbon pollution to EPA. But they cannot leverage their option to participate into a basis for thwarting Congress' command that EPA regulate dangerous emissions from power plants.⁶

NERA Study

The majority's report also relies heavily on a recent NERA analysis that is flawed in a number of key aspects.⁷ For one, it does not take into account any of the benefits of the Clean Power Plan. Also, as described more fully elsewhere,⁸ the NERA analysis ignores recent studies that show real world investments in energy efficiency programs generate net savings for consumers - efficiency shows up in the NERA study as a net cost – and the NERA analysis significantly overestimates the costs for renewables like wind and solar.

EPA estimates that, as a result of the Clean Power Plan, in 2030 carbon pollution from the power sector will be 32 percent below 2005 levels. In addition, by 2030 emissions of SO₂ from power plants will be 90 percent lower compared to 2005 levels, and emissions of NO_x will be 72 percent lower. EPA estimates the climate and public health benefits are worth an estimated \$34 billion to \$54 billion per year in 2030 – far outweighing the costs of \$8.4 billion – and will help avoid up to 3,600 premature deaths and up to 90,000 asthma attacks in children in 2030 alone.⁹

⁶ *In re West Virginia*, No. 15-1277 (D.C. Cir., envtl. intervenors response Aug. 2015).

⁷ Majority Report at 5.

⁸ See e.g. Union of Concerned Scientists, *ACCCE, NERA, and Another Misleading Study about the Clean Power Plan* (Nov. 12, 2015) (online at blog.ucsusa.org/john-rogers/accce-nera-and-another-misleading-study-about-the-clean-power-plan-952?_ga=1.6790970.989006215.1444331667).

⁹ U.S. Environmental Protection Agency, *Clean Power Plan By the Numbers* (Aug. 3, 2015) (online at www2.epa.gov/sites/production/files/2015-08/documents/fs-cpp-by-the-numbers.pdf).

When it comes to the retail price of electricity, while EPA estimates that electricity prices may increase somewhat, average electricity bills will be cut by 7 percent in 2030.¹⁰

The Rule's Impact on Climate Change

The majority's report doubles down on the claim that the Clean Power Plan will not have a meaningful impact on global greenhouse gas emissions.¹¹ There is no evidence to support the claim that CO₂ emissions from U.S. coal-fired power plants are an insignificant part of the climate problem. The United States is the world's second largest carbon polluter, responsible for nearly 20 percent of the world's carbon pollution¹² and fossil fuel-fired power plants alone account for roughly a third of our country's CO₂ emissions.

Further, the Clean Power Plan will play a significant role in the fight against climate change. U.S. action alone won't stop catastrophic climate change, but action by the rest of the world without U.S. action also will not succeed, and other countries have an excuse to delay action as long as the United States does as well. Strong U.S. action is an essential part of the global response to climate change. We must act aggressively to reduce carbon pollution, and so must other major emitters. The Clean Power Plan demonstrates U.S. leadership and is key to our effort to secure an ambitious and lasting international climate agreement.

Legal Challenges

Finally, the majority's report notes that "[T]he Attorneys General or state agencies of at least 27 states of the 47 states subject to the rule have challenged this regulation."¹³ However, legal challenges to final EPA rules are routine, and 34 states have already indicated they will prepare plans to comply with the rule.¹⁴

CONCLUSION

The history of the Clean Air Act is a history of exaggerated claims that have never come true. In reality, 45 years of clean air regulation have shown that a strong economy and strong environmental and public health protection go hand-in-hand.

¹⁰ U.S. Environmental Protection Agency, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, at 3-40 (Aug. 3, 2015) (online at www2.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf).

¹¹ Majority Report at 5.

¹² U.S. Environmental Protection Agency, *Global Greenhouse Gas Emissions Data* (online at www.epa.gov/climatechange/ghgemissions/global.html).

¹³ Majority Report at 6.

¹⁴ E&E's Power Plan Hub, *Legal Challenges* (online at www.eenews.net/interactive/clean_power_plan#legal_challenge_status_chart); *See, e.g. Just say no' strategy appears to be crumbling*, E&E News (Oct. 28, 2015) (online at www.eenews.net/stories/1060027079).

EPA's power plant rules are a critical part of our national strategy to reduce carbon pollution and protect the climate. The Clean Power Plan outlines a path to cleaner air, better health, a safer climate, and a stronger economy. H.J. Res. 72 would nullify that rule, and replace it with nothing.

For the reasons stated above, we oppose the resolution and we dissent from the views contained in the Committee's report.

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