

May 30, 2024

Dear Members of Congress,

The Environmental Protection Agency's (EPA) recently finalized [powerplant rule](#) will kill America's existing supply of baseload generation from coal. At the same time, the rule will deter investment in new baseload generation from natural gas. That means the rule will drive up consumer energy costs, impair grid reliability, and chill economic growth. The rule is also an unlawful power grab that defies the Supreme Court's decision in [West Virginia v. EPA](#).

Sen. [Shelley Moore Capito](#) (R-WV) and Rep. [Troy Balderson](#) (R-OH) are expected to introduce Congressional Review Act resolutions of disapproval to overturn the EPA's rule. We, the undersigned organizations, urge you to support those resolutions.

The EPA's rule sets various requirements that will quickly drive coal generation out of the nation's electricity fuel mix. If a coal powerplant intends to produce power after 2039, it must, by January 1, 2032, install equipment capable of capturing [90-percent](#) of its carbon dioxide (CO₂) emissions. Carbon capture is an energy- and water-intensive system that adds significantly to power generation costs. Moreover, carbon capture powerplants do not reduce emissions unless connected to networks of CO₂ pipelines and storage facilities that may never be built.

Unsurprisingly, despite decades of R&D and billions of dollars in ratepayer and taxpayer subsidies, only two carbon capture powerplants currently operate in North America—[Petra Nova](#) in Texas, and [Boundary Dam](#) in Saskatchewan. Both were built with hefty subsidies and [plagued with technical difficulties](#). Note, too, that central to the business model of each project is a partnership whereby the powerplant sells its captured CO₂ to companies engaged in enhanced oil recovery (EOR). [Thirty-eight states](#) (more than three-quarters) do not have EOR operations.

[PJM Interconnection](#), the [regional transmission organization](#) that coordinates wholesale electricity and manages grid reliability in all or parts of 13 states and the District of Columbia, observes in its statement on the rule: "There is very little evidence, other than some limited CCS [carbon capture and storage] projects, that this technology and associated transportation infrastructure would be widely available throughout the country in time to meet the compliance deadlines under the Rule."

The bottom line is that, for coal powerplants, 90-percent carbon capture is not an "adequately demonstrated" "best system of emission reduction" (BSER), taking "cost" and "energy requirements" into account, and thus is not a lawful basis for setting emission standards under [Section 111](#) of the Clean Air Act (CAA).

The EPA's rule provides [two alternative compliance options](#). A coal powerplant can avoid the expense of installing a carbon capture system if it (a) commits to shut down by January 1, 2032, or (b) commits to shut down by December 31, 2039, and repowers with 40 percent natural gas by January 1, 2030. [PJM Interconnection](#) cautions:

The present gas pipeline system is largely fully subscribed. Moreover, given local opposition, it has proven extremely difficult to site new pipelines just to meet today's

needs, let alone a significantly increased need for natural gas in the future. The Final Rule, which is premised, in part, on the availability of natural gas for co-firing or full conversion, does not sufficiently take into account these limitations on the development of new pipeline infrastructure.

It could not be clearer that the rule aims to drive coal generation out of U.S. electricity markets. Indeed, the EPA itself estimates that, by 2045, coal generation will decline by 94 percent compared to the prior policy baseline ([Regulatory Impact Analysis](#), Table D-10).

As in the [Clean Power Plan](#), the EPA is promulgating “emission performance standards” that are, in fact, non-performance mandates. ‘Perform less or not at all’ is not a valid performance standard under CAA Section 111.

The EPA’s new rule also establishes a [90-percent carbon capture requirement](#) for new baseload natural gas powerplants. Far from being “adequately demonstrated,” no utility scale natural gas CCS plant exists today. Only one small-scale facility was ever built—[Florida Power & Light’s 40 MW CCS gas plant](#) in Bellingham, Massachusetts. It closed in 2005. That is nowhere near an adequate technological basis on which to predicate an industry-wide 90 percent carbon capture requirement.

The EPA could not have picked a worse time to attack affordable, reliable, coal- and gas-fired generation. Electricity demand is projected to [grow substantially](#) due to the proliferation of data centers, expansion of Artificial Intelligence, onshoring of chip production, and the EPA’s and California’s policies to forcibly [electrify U.S. motor vehicle fleets](#).

[PJM Interconnection warns](#): “The future demand for electricity cannot be met simply through renewables given their intermittent nature. Yet in the very years when we are projecting significant increases in the demand for electricity, the Final Rule may work to drive premature retirement of coal units that provide essential reliability services and dissuade new gas resources from coming online.”

In [West Virginia v. EPA](#), the Supreme Court made it clear that CAA Section 111 does not authorize the EPA to act as the nation’s grid manager or resolve the national debate on climate policy with respect to a fundamental industrial sector. If Congress wanted the agency to possess such authority, it would have said so in clear terms. Congress has not done so, yet the EPA is still trying to assert an expansive transformation of its regulatory power. As in the CPP, the EPA ignores the separation of powers that is vital to the nation’s republican form of government.

For those reasons, our organizations urge legislators to overturn this rule.

Sincerely,

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