December 1, 2014

Gina McCarthy, EPA Administrator
Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460
VIA ELECTRONIC FILING

RE: Docket ID No. EPA-HQ-OAR-2013-0602

Dear Administrator McCarthy:

On behalf of the Small Business & Entrepreneurship Council (SBE Council) and the Center for Regulatory Solutions, I am submitting these comments on EPA's proposed Clean Power Plan to regulate carbon dioxide emissions from existing fossil-fueled power plants under Section 111(d) of the Clean Air Act.[1]

SBE Council is a nonprofit, nonpartisan advocacy, research and education organization dedicated to protecting small business and promoting entrepreneurship. We work to advance and secure policies, resources, and educational initiatives that encourage entrepreneurship and small business growth. As a project of the SBE Council, the Center for Regulatory Solutions (CRS) helps inform the American public about the burdens and consequences of excessive and counterproductive regulation, and seeks to improve the rulemaking process so that entrepreneurs and ordinary citizens are treated fairly, and their voices are heard. CRS is working to ensure that regulations are crafted in an open, transparent manner, are subjected to rigorous standards of peer-review and cost-benefit analysis, and based on objective scientific data.

In June 2013, President Obama announced the release of his Climate Action Plan (CAP)[2], a comprehensive list of regulatory actions and other incremental steps designed to address climate change. In reality, the CAP is a hodgepodge of mandates that will raise energy costs and erode the competitiveness and margins of America's small businesses and entrepreneurs. Instead of relying on the nation's private sector innovators to create

[1] "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (6/carbon-pollution-emission-guidelines-for-existing-stationary-sources-electric-utility-generating)
[2] "The President's Climate Action Plan," Executive Office of the President, June 2013 (http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf)

jobs and new technologies to increase domestic energy supplies and drive energy efficiency, the President's intrusive top-down approach will harm innovation while failing a basic cost-benefit test for small businesses. The new and unwarranted layers of excessive regulation will negatively affect SBE Council's diverse membership.

The CAP's core policies will act as a massive new tax that, over time, will cripple many small firms' ability to invest, create new job opportunities, and revive the stagnant U.S. economy. The centerpiece of the CAP is EPA's Clean Power Plan (CPP), a new federal mandate to address carbon dioxide emissions from existing fossil-fuel fired power plants. After a thorough review of the CPP, SBE Council and CRS believe the wisest course of action is for EPA to withdraw the proposed rule and abandon its costly agenda to regulate carbon dioxide under the Clean Air Act.

The reasons for our position are straightforward. EPA's proposed rule:

- Is illegal, stretching far beyond the narrow boundaries of Section 111(d) of the Clean Air Act;

- Imposes high costs for no meaningful benefits. Electricity will be more expensive for small business owners and entrepreneurs, which will slow economic growth, harm competitiveness, and destroy jobs. There will be no effect on global temperatures and climate change; and

- Threatens the reliability of the nation's bulk electric power system, which raises the prospect of blackouts and brownouts, which can in turn increase operating expenses and uncertainty, as well as reduce output and revenues.

The Clean Power Plan Is Illegal

Under the CPP, EPA has proposed to require states to submit implementation plans that meet certain performance standards, or, in EPA's parlance, "goals." But make no mistake; they are hardly goals: they are *mandates* that will effectively re-engineer the nation's electric power grid. Overall, the states must reduce carbon emissions 30 percent below 2005 levels by 2030.

Pursuing this outcome is a quixotic endeavor, if only because there is no commercially available technology to reduce carbon emissions from existing power plants.[3] To get around this obstacle, EPA chose to define and apply the "best system of emission reduction" (BSER)—the technological performance standard delineated in Section 111—using so-called "outside the fence" measures.

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[3] See, e.g., testimony by J. Edward Cichanowicz before the House Subcommittee on Energy and Power, November 14, 2013 (http://docs.house.gov/meetings/IF/IF03/20131114/101482/HHRG-113-IF03-Wstate-CichanowiczJ-20131114.pdf)

In other words, instead of establishing BSER based on what is technologically feasible and available—i.e., heat-rate efficiency improvements at existing fossil-fuel fired power plants—EPA is forcing states to make draconian emissions reductions under a complicated set of four "building blocks." They include: 1) heat rate improvements; 2) higher utilization of natural gas combined cycle power plants; 3) increases in renewable energy; and 4) greater demand-side energy conservation.

Aside from building block 1, these other extreme measures fall well outside the scope of EPA's authority under the Clean Air Act. EPA appears more interested in furthering the President's climate change legacy than following the law. As Clean Air Act attorneys Peter Glaser, Carroll W. McGuffey, III, and Hahnah Williams Gaines recently explained:

> EPA's proposal is unprecedented in the 40-year history of the Section 111 performance-standards program, both in its severity and in its conceptual underpinnings. Before now, the agency has always formulated Section 111 standards based on what have come to be referred to as "inside-the-fence" measures—cost-effective actions that can be undertaken at the regulated facility itself, such as installing pollution controls. When it comes to controlling carbon dioxide emission from coal generators, however, EPA obviously did not think that inside-the-fence measures would yield a sufficient level of emission reductions. EPA has conceded that the only feasible inside-the-fence measure for reducing coal-plant carbon dioxide emissions is improving the efficiency of the combustion process. But even under EPA's highly aggressive assumptions as to the efficiency gains existing generators can hypothetically make, the result is only a six percent reduction in carbon dioxide emissions, which is far short of the President's carbon goals.[4]

The view of Glaser et al.—that EPA's beyond-the-fence-line approach is unlawful—is shared by 18 states. In a white paper on 111(d) released earlier this year[5], 17 state attorneys general and a top state environmental regulator wrote:

> Such proposals, often offered as ways of providing "flexibility," do not conform to the limitations Congress has placed on EPA in the Clean Air Act... Simply put, EPA lacks statutory authority (and is limited by its own regulations) to issue emission guidelines seeking reductions of CO2 emissions from coal-based EGUs in a manner based on something other than an adequately demonstrated reduction system for such EGUs.

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[4] "EPA's Section 111(d) Carbon Rule: What if States Just Said No?" By Peter Glaser, Carroll W. McGuffey, III, and Hahnah Williams Gaines; November 2014 white paper for the Federalist Society.

[5] "Perspective of 18 States on Greenhouse Gas Emission Performance Standards for Existing Sources under § 111(d) of the Clean Air Act" (http://www.americaspower.org/sites/default/files/AG%20White%20Paper.pdf). Signed by the following states: Nebraska, Michigan, Oklahoma, Alabama, Alaska, Arizona, Florida, Georgia, Kansas, Kentucky, Montana, North Dakota, Ohio, South Carolina, South Dakota, West Virginia, Wisconsin, and Indiana.

From a legal perspective, then, the CPP is fatally flawed and beyond repair, and for this reason alone, EPA should withdraw the proposal.

All Cost, No Benefit

Even if the CPP followed what the CAA prescribes and allows, the proposal still needs to be abandoned because it fails a basic cost-benefit test. The costs of the proposal on consumers and small businesses are substantial, while the direct benefits are essentially non-existent.

According to a recent study conducted by NERA Economic Consulting, the CPP would raise electricity prices by as much as 17 percent between 2017 and 2031, depending on which building blocks are available for compliance.[6] The proposal could also force the retirement of as much as 169 gigawatts (GW) of coal-fired capacity, on top of the 60 GW projected to close because of, principally, EPA's Mercury and Air Toxics Standards (MATS) regulation[7]. The CPP and MATS would decimate the nation's coal fleet, shutting down roughly two-thirds of its existing capacity. Overall, NERA found, the CPP would impose about $366 billion in costs on the U.S. energy system between 2017 and 2031.

Higher energy costs impose disproportionate economic impacts on small business owners, as electricity costs often constitute a small firm's biggest expenses. Consider Bob Farber, president of Quality Perforating Inc., a manufacturer of pierced coils, sheets and components, in Scranton, PA. As Farber observed, "For a business like ours, electricity is probably our biggest fixed cost because all our machines are electric."[8] Small business owner Todd Westby expressed similar concern in the *International Business Times*: "Electricity prices are a big concern for me. And on a tight budget, I can only account for so much to go toward the electricity bill before I have to pass this cost onto my customers."[9] This reality is shared by most SBE Council members.

Along with higher energy costs, the CPP would destroy jobs, particularly in the coal industry. According to an analysis by Eugene Trisko, counsel to the United Mine Workers of America, the CPP would destroy 187,000 direct and indirect jobs. As Trisko noted before the Pennsylvania legislature earlier this year:

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[6] "Potential Energy Impacts of the EPA Proposed Clean Power Plan," by NERA Economic Consulting, October 2014 (http://www.americaspower.org/sites/default/files/NERA_CPP%20Report_Final_Oct%202014.pdf)
[7] "Planned coal-fired power plant retirements continue to increase," Energy Information Administration, March 20, 2014 (http://www.eia.gov/todayinenergy/detail.cfm?id=15491)
[8] "Higher electric costs particular shock to small businesses in 1 Q," *Scranton Times-Tribune*, May 25, 2010 (http://thetimes-tribune.com/news/business/higher-electric-costs-a-particular-shock-to-small-businesses-in-1q-1.810236)
[9] "For Small Businesses, Now Is the Time for Coal," by Todd Westby, *International Business Times*, May 8, 2012 (http://www.ibtimes.com/small-businesses-now-time-coal-705731)

> These are OUR jobs. These are the jobs of the coal miners, the utility workers, the boilermakers, the railroad workers, and the related folks in the community who depend on those very high-wage, high-skilled jobs. These are jobs that typically pay $80, $90, $100,000 dollars a year. You do send your children to college on these jobs."[10]

With so much economic hardship imposed by one rule, the question arises as to what the benefits, if any, will be. EPA Administrator Gina McCarthy pledged that EPA's carbon mandates will "protect the health of our families and future generations." Yet McCarthy has also said that unilateral action to address global climate change will have minimal effect. As she told the House Energy and Commerce Committee, "I think what you're asking is can EPA in and of itself solve the problems of climate change. No we cannot."[11] Yet it appears that EPA is acting as if it can do just that. But such breathtaking overreach can only fail. The International Brotherhood of Boilermakers put it best: "The unilateral destruction of the American coal industry will not solve global climate change."[12]

By the same token, re-engineering the nation's electric grid will not "solve" global climate change, either. Marlo Lewis of the Competitive Enterprise Institute recently pointed out that, according to MAGICC, a climate model developed with EPA support, "the Clean Power Plan would avert less than two-hundredths of a degree Celsius of warming by 2100 — an effect too small to be measured or verified."[13]

Threat to Reliability

Consumers and small businesses *can* measure and verify when the lights go out—and that is exactly what could happen under the CPP. The North American Electric Reliability Corporation (NERC), the non-profit entity established by Congress to oversee the reliability of the bulk power system, recently conducted a reliability impact study of the CPP. NERC concluded that the CPP "introduces potential reliability concerns that are more impactful than prior environmental compliance programs due to the extensive impact to fossil-fired generation."

NERC questioned many of the assumptions EPA used to support its economic impact analysis of the CPP. For instance, NERC said EPA's assessment of the potential coal plant retirements due to the CPP could be "conservative," and that, if EPA's assumptions

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[10] Statement by Eugene Trisko, Counsel, United Mine Workers of America, before the Pennsylvania Senate Environmental and Energy Resources Committee, June 27, 2014 (http://environmental.pasenategop.com/files/2014/06/Trisko-Testimony.pdf)

[11] "Rep. Pompeo Questions Administrator McCarthy on Obama Climate Plan," by Marlo Lewis, GlobalWarming.Org, September 18, 2013 (http://www.globalwarming.org/2013/09/18/rep-pompeo-questions-epa-administrator-mccarthy-on-obama-climate-plan/).

[12] "Boilermakers say new EPA regs will destroy coal industry," Press release, September 20, 2013 (http://www.countoncoal.org/assets/files/IBB_Statement_on_EPA_Regs.pdf)

[13] "How Unlawful Is EPA's Clean Power Plan?" by Marlo Lewis, GlobalWarming.Org, October 6, 2014 (http://www.globalwarming.org/2014/10/06/how-unlawful-is-epas-clean-power-plan/).

prove wrong, "developing suitable replacement generation resources to maintain adequate reserve margin levels may represent a significant reliability challenge, given the constrained time period for implementation."[14]

NERC also expressed concern about the CPP-induced shift from coal to natural gas and renewables for power generation. As NERC explained, greater reliance on natural gas requires significant construction of new natural gas pipelines, while more transmission capacity is needed to deliver renewable generation to demand centers:

> The CPP will accelerate the ongoing shift toward greater use of natural-gas-fired generation and variable energy resources (VERs) (renewable generation). Increased dependence on renewable energy generation will require additional transmission to access areas that have higher-grade wind and solar resources (generally located in remote areas). Increased natural gas use will require pipeline expansion to maintain a reliable source of fuel, particularly during the peak winter heating season. Pipeline constraints and growing gas and electric interdependency challenges impede the electric industry's ability to obtain needed natural gas services, especially during high-use horizons.[15]

Conclusion

Whether it's the potential for blackouts, higher energy costs, or the prospect of fewer jobs and opportunities, there are significant reasons why America's small businesses and entrepreneurs oppose EPA's CPP—and why they believe it should be scrapped altogether. It's time for President Obama and EPA to change course and pursue a modern and practical policy strategy, one that encourages domestic energy production, encourages private enterprise and innovation, increased entrepreneurship, and enables America's businesses to compete and grow in the global marketplace.

Respectfully submitted,

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[14] North American Electric Reliability Corporation, Initial Reliability Review, Potential Reliability Impacts of EPA's Proposed Clean Power Plan," November 2014 (http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential_Reliability_Impacts_of_EPA_Proposed_CPP_Final.pdf).

[15] Ibid.