

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

November 9, 2011

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Napolitano:

Pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce seeks information from the Department of Homeland Security's National Protection and Programs Directorate (NPPD) regarding the impact of power sector regulations recently proposed or finalized by the Environmental Protection Agency (EPA) on the nation's Critical Infrastructure and Key Resources (CI/KR).

Commenters have raised concerns that strict regulatory requirements and compliance timelines under EPA's regulations for the installation of emissions control technologies on electric generating units could significantly impact energy security and reliability. These rules include the Cross-State Air Pollution Rule (CSAPR), proposed emission control requirements for hazardous air pollutants from coal- and oil-fired EGUs (Utility MACT), and other EPA power sector rules.

Questions have been raised concerning whether EPA has fully assessed how the cumulative effect of these regulations will impact the reliability of the electric grid. For example, a preliminary analysis completed by Federal Energy Regulatory Commission (FERC) staff indicates that EPA regulations could "likely" or "very likely" close 81 gigawatts (GW) of coal-fired generating capacity. Similarly, the North American Electric Reliability Corporation found that proposed EPA power sector rules could result in the retirement of 70 GW of generating capacity.

Recently, the Institute for Energy Research (IER) compiled a list, based on EPA modeling and retirements announced by power plant operators, of power plants projected to be closed by EPA regulation. The IER list indicates that at least 28 GW of generating

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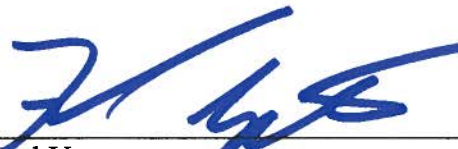
capacity will close.¹ Plant closings at the levels and in the relatively short period reflected on IER's list could adversely impact electric reliability by reducing reserve margins, leaving the grid more vulnerable to disruption, and threatening CI/KR across the country.

Accordingly, we request the Department of Homeland Security's NPPD provide responses to the following questions:


1. Has NPPD analyzed the potential impact that EPA's power sector regulations, including CSAPR and Utility MACT, could have on the nation's CI/KR?
2. In completing any such review or analyses, has NPPD reviewed other unit-level research on potential power plant closures, including the list compiled by IER and the preliminary analysis completed by FERC staff?
3. Please provide any analyses, briefings, or memoranda regarding the potential impacts relating to EPA power sector rules or potential rules on the nation's CI/KR.
4. Please describe whether the Department, and NPPD in particular, has participated in the interagency review of EPA's proposed and final power sector rulemakings, and the scope of any such participation.

Please find attached to this letter instructions relating to the requests for documents. Please provide the written responses and documents requested no later than two weeks from the date of this letter. Should you have any questions, please contact Mary Neumayr of the Committee staff at (202) 225-2927.


Sincerely,



Fred Upton
Chairman



Ed Whitfield
Chairman
Subcommittee on Energy and Power



Cliff Stearns
Chairman
Subcommittee on Oversight and
Investigations

¹ Institute for Energy Research, <http://www.instituteforenergyresearch.org/2011/10/07/ier-identifies-coal-fired-power-plants-likely-to-close-as-result-of-epa-regulations/>.

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cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

Attachment

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions when possible. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

13. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

14. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

15. In the event that a responsive document is withheld on any basis, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document.

16. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the

Committee, identified in a privilege log provided to the Committee, as described in (15) above, or identified as provided in (10) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" means and refers to you as a natural person and the United States Department of Homeland Security (the "DHS") and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the DHS; and includes any other person(s) defined in the document request letter.

8. The term "DHS" refers to the United States Department of Homeland Security and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the DHS.