

United States Senate
WASHINGTON, DC 20510

October 31, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OAR-2017-0355

Dear Administrator Wheeler,

We strongly oppose the Environmental Protection Agency's (EPA) so-called "Affordable Clean Energy" proposal. By EPA's own account, this proposal does not achieve affordable energy or clean energy, and fails to address climate change. We request that the Affordable Clean Energy proposal be withdrawn and the Clean Power Plan be reinstated.

For decades under Republican and Democratic leadership, our nation's premier scientific agencies, such as NASA and NOAA, have joined with the global scientific community in researching climate change and its global effects. We know that climate change is leading to rising global temperatures, rising sea levels, and more intense and frequent weather events. Every year we learn more every year about how damaging climate change is, and will be, to our environment and our health.

Climate science has compelled Presidents and senior federal officials of all party affiliations to call for action. Back in 1989, President Reagan's Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs recommended action on climate change, stating, "[I]f climate change within the range of current predictions (1.5 to 4.5 degrees centigrade by the middle of next century) actually occurs, the consequences for every nation and every aspect of human activity will be profound."¹ In 1992, President George H. W. Bush signed and the Senate ratified the United Nations Framework Convention on Climate Change intended to achieve the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."² Included in the signed treaty is a guiding principle that "[P]arties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures,"³ Later in the President George W. Bush Administration, EPA started a proposal⁴, which was completed in 2009 by the Obama

¹ <https://www.scribd.com/document/292082545/Memorandum-Feb-27-1989>

² S. Treaty Doc. No. 102-38

³ S. Treaty Doc. No. 102-38

⁴ https://insideclimatenews.org/sites/default/files/2007_Draft_Proposed_Endangerment_Finding.pdf

Administration EPA, that found that greenhouse gases – including carbon dioxide (CO₂) – are an endangerment to public health and welfare based on thousands of peer-reviewed scientific studies (known as the Endangerment Finding).⁵ The Endangerment Finding helped build the legal basis for EPA’s stationary and mobile source climate rules promulgated under President Obama.

Despite all the warnings and calls for action over the years, many still believe climate change is a problem for future generations and not something that deserves real action today. Nothing could be further from the truth. This month, the United Nation’s Intergovernmental Panel on Climate Change (IPCC) issued a report based on 6,000 scientific studies written by 91 scientists from 40 countries. The report concludes that if the global community does not enact “rapid and far-reaching” carbon reduction policies in the next decade, we could face irreversible damage to our climate as soon as 2040.⁶

However, we don’t need to wait for 2040. Millions of Americans are already experiencing the harsh new reality of climate change. In the last ten years alone, almost every part of the country has been affected by extreme weather events fueled by climate change. In the past two years, two 1,000 year floods have devastated Ellicott City, Maryland and forest fires, fueled by extreme heat and drought, have ravaged states like Montana, California and Oregon. Since we started keeping records, only forty-nine Category 5 hurricanes have threatened the United States, three of which occurred in the last year. The hurricanes that aren’t Category 5 are also having devastating effects. Currently, the people of Florida, Georgia, North Carolina, and South Carolina are struggling to recover from historic hurricanes that recently devastated their communities.

From these extreme weather events and more, we know Americans are already paying the costs of climate change in the form of lost incomes, lost livelihoods, and in some cases, lost lives. And the costs keep rising. According to NOAA, the United States has had 11 weather and climate events in 2018 so far that has resulted in \$1 billion or more in losses. NOAA also reports that extreme weather events costing \$1 billion or more have doubled in frequency over the past decade – with \$749 billion in losses occurring over the last ten years (this does not include costs incurred from the last two hurricanes). Scientists and medical professionals have also linked climate change to increased ground-level ozone and allergens in the air, deadly high temperatures, and more pests in our food and water – all of which are having a negative effect on human health and on health care costs. All further proving Americans cannot afford inaction on climate change.

The reality of climate change is daunting, but the challenge it will take to change course is not insurmountable. Our nation is already in a better place than we were just a decade ago when it comes to reducing carbon emissions. This is in large part due to smart environmental regulations – such as the Clean Power Plan - and investments made in clean energy by the Obama Administration, Congress, and states. These smart clean energy policies not only helped reduce air pollution that affects our lungs and climate, these polices also helped our country rebound from one of its greatest economic downturns in history by providing new jobs in the clean energy

⁵ 74 FR 66495

⁶ <http://www.ipcc.ch/report/sr15/>

market and lower energy bills for consumers. Further proving we do not have to choose between clean air, a better climate and a strong economy.

Yet, despite all of the progress our country has made so far in clean energy gains, we know our nation's largest carbon polluters must make more meaningful reductions to change our climate future for the better. The federal government can learn a great deal from what's happening at the state level, but states cannot tackle climate change alone. The federal government, especially your agency, must take leadership.

Beyond a moral obligation to provide climate leadership, we know EPA has a legal obligation under the Clean Air Act to address carbon polluters, including our nation's fossil-fuel power plants. The courts have agreed with this assessment⁷ and is one of the reasons why President Obama's EPA pursued and finalized the Clean Power Plan. As you know, the Clean Power Plan is the first federal rule to regulate carbon emissions from our nation's largest stationary sources of carbon pollution - fossil-fuel power plants. The rule puts utilities on a fifteen-year glide path to reduce carbon dioxide emissions by a third from 2005 levels through commonsense targets and incentives for cleaner coal plants, renewable energy and energy efficiency. With the Clean Power Plan, President Obama's EPA mirrored smart policies already happening at the state level by giving utilities the ability to use a flexible, market-based system to reduce carbon emissions and by allowing states the flexibility to implement reductions that work for each state. The Clean Power Plan also reflects an unprecedented two-year outreach and engagement process with states and stakeholders, and was only finalized after the agency held four public hearings and considered 4.3 million comments during a 167 public comment period.

Instead of building on President Obama's forward-looking environmental standards, we fear your agency has decided to turn a blind-eye to climate science and to the agency's climate obligations under the law. In doing so, you risk American lives in both the short-term and long-term. That's abundantly clear in the so-called "Affordable Clean Energy" proposal released on August 21, 2018, which is EPA's misguided attempt to replace the Clean Power Plan. No matter what EPA calls this proposal, if implemented, it will not result in affordable energy, cleaner air, or a better climate, especially when compared to the Clean Power Plan.

With respect to affordable energy, your agency has unfortunately decided to take a very limited scope in addressing power plant emissions with the so-called "Affordable Clean Energy" proposal. By narrowly focusing only on the heat input efficiencies at fossil fuel power plants (also called the "inside the fenceline" approach), EPA is missing real reductions that could save rate payers and utilities money. For example, the narrow focus prevents emissions trading to meet reductions. Whereas the Clean Power Plan allows for trading, giving industry the flexibility to determine what approach works best for each plant. The Clean Power Plan also incentivizes states to join emission trading programs already established, which gives more certainty to industry. Already, we are hearing real concerns from the utility industry that the lack of flexibility in your proposal could create uncertainty for future investments, future plant closures and future energy prices. In addition, the proposal does nothing to incentivize investments in energy efficiencies.

⁷ <https://www.epa.gov/climatechange/us-court-appeals-dc-circuit-upholds-epas-action-reduce-greenhouse-gases-under-clean>

In comparison, the Clean Power Plan's energy efficiency incentives are expected to save consumers around \$85 a year in electric bills. Consumers will never see these savings if the new proposal is finalized. The evidence shows the so-called "Affordable Clean Energy" proposal does not result in "affordable energy."

On clean energy, EPA's so-called "Affordable Clean Energy" proposal does not properly address power sector carbon emissions or promote clean energy investments. For example, EPA's proposal fails to set strong carbon pollution standards for fossil fuel power plants and instead allows states to implement their own standards based solely on what can be achieved at the plant. By deeming all state plans approved by six months (whether EPA career staff gets a chance to review or not), EPA may never have the ability to ensure even the limited emission standards set by states are appropriate and meaningful. Further, EPA is attempting to change the New Source Performance Standard process to allow states the flexibility to implement weak or no standards for certain sources depending on nonhealth-related issues, such as plant age or location. In addition, EPA is also attempting to arbitrarily change the New Source Performance Standard deadlines from 15 months to 6 years and beyond, allowing States to tact on even longer delays if requested. And finally, EPA is attempting to resurrect failed attempts to change the New Source Review Program for utilities, which will result in increased in emissions across all pollutants and has already been found illegal by the courts.⁸ Different standards and timelines for different states make it very difficult for utilities to make long-term investments in clean energy. In addition, the changes proposed will allow for more pollution to be emitted, and not just carbon pollution.

Even your agency's own analysis shows the Clean Power Plan is better for our health and our climate than the so-called "Affordable Clean Energy" proposal. EPA estimates the Clean Power Plan would have created up to \$54 billion per year in public health and climate benefits. This would have prevented 3,600 premature deaths each year through reduced exposure to particle pollution and ozone. In comparison, EPA projects the so-called "Affordable Clean Energy" proposal will increase yearly power plant soot, smog, mercury and carbon air pollution emissions. By 2030, EPA estimates annual emission increases of carbon emissions by up to 61 million tons; sulfur dioxide emissions by up to 53 thousand tons; and nitrogen oxide emissions by 39 thousand tons. In addition, EPA estimates annual mercury pollution will increase up to 5 percent by 2030. All of this additional air pollution will negatively impact American nationwide. EPA's own estimates show that the so-called "Affordable Clean Energy" proposal will result in up to 120,000 additional asthma attacks, up to 48,000 additional loss work days, and up to 1,400 lives lost by 2030. We fear these emission estimates are likely underestimating the additional pollution and health effects from the proposal because EPA did not fully account for emission increases that will result from the New Source Review changes or from the potential delays or inaction allowed at the state level. Again, it is evident, the so-called Affordable Clean Energy proposal in no way results in "clean energy."

With all its flaws, the so-called "Affordable Clean Energy" proposal fails to meet EPA's most basic responsibilities to protect public health, much less the agency's responsibilities to help our nation address climate change. It is fitting that the last day of public comment falls on Halloween. If the so-called "Affordable Clean Energy" proposal is finalized, it will surely be a

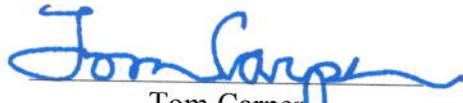
⁸ New York v. EPA, 413 F.3d 3 (DC Cir. 2005)

trick – not a treat - for all Americans who want and deserve clean air, a better climate and affordable energy. We call on you to reject this flawed proposal and instead implement the Clean Power Plan.

If you or your staff have questions about this letter, your staff is encouraged to contact Laura Gillam of Senator Carper's Environment and Public Works Committee staff at laura_gillam@epw.senate.gov. We also request that this letter be added to the docket under Docket ID No. EPA-HQ-OAR-2017-0355.

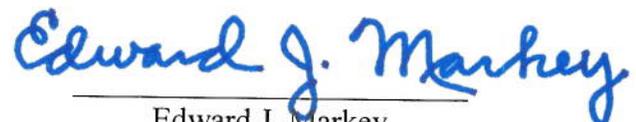
We appreciate your prompt attention to our requests.

Sincerely,


Tom Carper
United States Senator


Jeffrey A. Merkley
United States Senator


Kirsten Gillibrand
United States Senator


Edward J. Markey
United States Senator


Michael F. Bennet
United States Senator