



U.S. SENATE COMMITTEE on ENVIRONMENT & PUBLIC WORKS

RANKING MEMBER SHELLEY MOORE CAPITO

Clean Power Plan 2.0 CRA Summary

On April 26, 2024, the EPA finalized limits for new gas-fired combustion turbines, and existing coal-fired steam generating units. The standards are based on expensive, stringent, and unrealistic requirements to install carbon capture and sequestration/storage (CCS), and natural gas co-firing.

As laid out in section 111 of the Clean Air Act, the proposed new source performance standards (NSPS) and emission guidelines are supposed to reflect the application of the best system of emission reduction (BSER) that, taking into account costs, energy requirements, and other statutory factors, is adequately demonstrated for the purpose of improving the emissions performance of the covered electric generating units.

The Clean Power Plan 2.0 runs counter to the Supreme Court's decision in *West Virginia v. EPA*, 597 U.S. (2022). The major questions doctrine dictates "a clear statement is necessary for a court to conclude that Congress intended to delegate authority of this breadth to regulate a fundamental sector of the economy."¹ There is no "clear congressional authorization" for the Agency to point to with respect to this rule. The Clean Power Plan 2.0's compliance mechanisms are infeasible and not adequately demonstrated as applied to covered entities.

In direct conflict with *West Virginia v. EPA*, the Clean Power Plan 2.0 requires generation shifting for coal-fired power plants that intend to operate on or after January 1, 2032 but cease operation before January 1, 2039. While the Agency falsely claims this does not run afoul of the Supreme Court's decision, it is undeniable the final rule would require generation shifting that the Court has definitively found Congress has never granted EPA the authority to require under the Clean Air Act.

Significant infrastructure – beyond the fence line of an EGU – is required to support deployment of CCS. Given the current permitting environment, it is unreasonable for the EPA to conclude that the necessary infrastructure will be in place within the timelines of the rule to support widespread deployment of CCS at existing or proposed EGUs.

Recent reports have forecast incredible demand growth in the power sector due to expected growth in new industries such as electric vehicles, data centers, and battery factories. This comes at the same time that large amounts of our baseload power are announcing retirements. Over the next two years, it is expected that 20,000 MW of dispatchable generation will retire. More than 60,000 MW of dispatchable power generation are scheduled to retire over the next five years. The Clean Power Plan 2.0 is designed to expedite the already rapid retirement of dispatchable, baseload generation while preventing the construction of new dispatchable, baseload generation.

Ranking Member Shelley Moore Capito is leading a CRA resolution in the Senate to reject this disastrous regulation, and prevent future EPA regulations that are substantially similar to protect baseload power and ensure reliability of the electric grid.

If your boss would like to cosponsor the Clean Power Plan 2.0 CRA resolution, please contact [Elizabeth Horner@epw.senate.gov](mailto:Elizabeth.Horner@epw.senate.gov) and [Will Dixon@epw.senate.gov](mailto:Will.Dixon@epw.senate.gov).

¹ *West Virginia v. EPA*, 597 U.S. (2022) (internal quotation marks removed).