

United States Senate

WASHINGTON, DC 20510

October 9, 2018

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

Dear Acting Administrator Wheeler,

We are writing to request that you extend the comment period by at least 60 days and increase the number of public hearings to at least four in order to allow for thorough public consideration and input for the proposed rule, *Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Regulations to New Source Review Program*, 83 Fed. Reg. 44,746—(Aug. 31, 2018)—informally known as the Affordable Clean Energy (ACE) rule.

Before finalizing the Clean Power Plan, the Environmental Protection Agency (EPA) conducted an unprecedented two-year outreach and engagement process with states, tribes and stakeholders. EPA's outreach process included four public hearings, talking to over 3,000 stakeholders including companies, nonprofits, and states, and an open public comment period for 167 days. Only after this outreach and after receiving and considering 4.3 million comments did EPA finalize the Clean Power Plan.

Our constituents should be given an equal opportunity to evaluate and weigh in on a proposed replacement. Currently, the public comment period for the proposed rule will only be 61 days, and only one public hearing will be held, in Chicago in the EPA's Region 5, on October 1.¹ These opportunities for public input are woefully inadequate given the serious legal, environmental, and human health concerns raised by the proposed rule. In fact, the ACE rule is effectively comprised of three rules in one—the revised determination of the “best system of emissions reduction” under the Clean Air Act, the delegation of additional authority to states to regulate carbon pollution, and revisions to the New Source Review program that potentially enables coal-fired power plants to evade upgrading pollution controls²—each of which could individually justify its own extensive period of public input.

The Clean Power Plan was approved in 2015 to address the overwhelming scientific consensus that humans are the dominant cause of climate change and provide a path forward to reducing such impacts. While the Clean Power Plan provided a concrete—and realistic—goal of achieving

¹ Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Regulations to New Source Review Program, 83 Fed. Reg. 45,588 (Sep. 10, 2018) (to be codified at 40 C.F.R. pts. 51, 52, and 60).

² Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Regulations to New Source Review Program, 83 Fed. Reg. 44,746 (Aug. 31, 2018) (to be codified at 40 C.F.R. pts. 51, 52, and 60).

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a 32 percent reduction in energy sector emissions by 2030,³ the ACE rule provides no such limit and thus hinders the ability of the EPA to regulate carbon emissions—a violation of the Clean Air Act. Numerous other complex legal issues with the proposed rule will take additional time to be carefully reviewed.

Even according to the EPA's own analysis, the ACE rule will result in the release of at least 12 times more carbon emissions from the energy sector over the next decade, along with increased emissions of pollutants such as sulfur dioxide, nitrogen oxide, and mercury, compared to the Clean Power Plan.⁴ Health effects stemming from these pollutants could include up to 1,400 additional premature deaths, 140,000 school absences, and 120,000 cases of exacerbated asthma annually by 2030, again compared to the Clean Power Plan.⁵ Given these extremely harmful potential consequences, the public needs additional time to assess EPA's modeling methodology for determining the health and environmental impacts of the proposed rule.

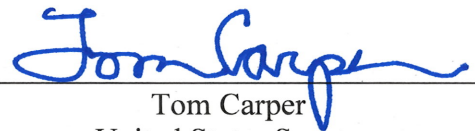
Due to these concerns, we request that you extend the comment period through December 31, 2018, and that you hold at least three additional public hearings to discuss the proposed rule—including in areas that stand to be most affected by the impacts of climate change, such as coastal flooding, drought, and wildfires. A 120-day public comment period, subsequently extended by 45 days, followed the publication of the proposed Clean Power Plan.⁶ The duration of the comment period for the ACE proposed rule should be similar.

As we continue to hear from our constituents and local and state officials on this matter, we will likely have additional comments for you in the future on this issue. We will be closely following your progress on this critical matter. Should you have any questions about this request, please contact Lindsey Griffith at 202-224-2742.

Sincerely,



Edward J. Markey
United States Senator



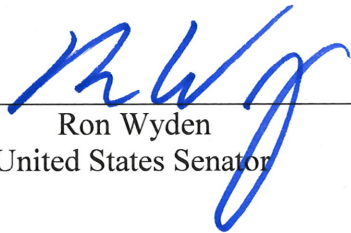
Tom Carper
United States Senator

³ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 FR 64,461 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60).


⁴ U.S., Environmental Protection Agency, *Regulatory Impact Analysis for the Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program*, Publication No. EPA-452/R-18-006, Aug. 2018, https://www.epa.gov/sites/production/files/2018-08/documents/utilities_ria_proposed_ace_2018-08.pdf.

⁵ U.S., Environmental Protection Agency, *Regulatory Impact Analysis for the Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program*, Publication No. EPA-452/R-18-006, Aug. 2018, https://www.epa.gov/sites/production/files/2018-08/documents/utilities_ria_proposed_ace_2018-08.pdf.

⁶ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 FR 64,461 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60).



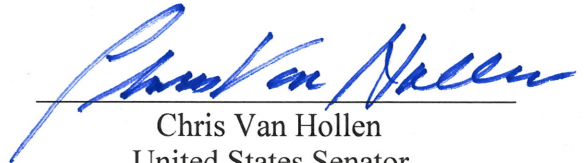
Ron Wyden
United States Senator



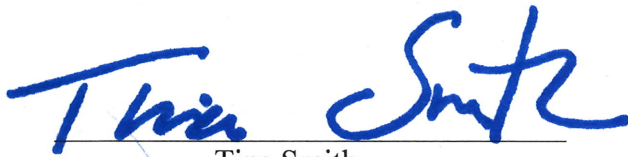
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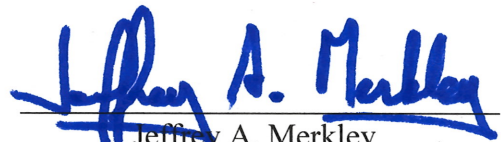
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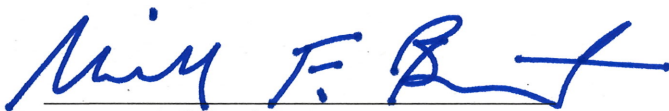
Margaret Wood Hassan
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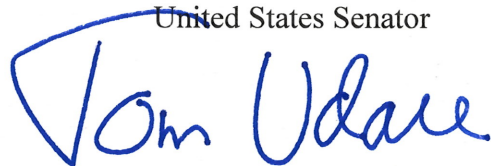
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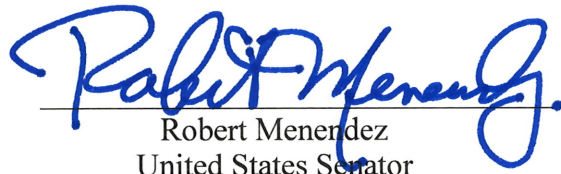
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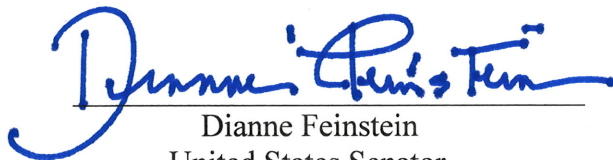
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Cory A. Booker
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Bernard Sanders
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