POWER THE FUTURE

EPA's Clean Power Plan 2.0:

A Green Disaster for America

NOVEMBER 2023

CONTENTS

SUMMARY

President Biden's climate change agenda is a travesty. Unfortunately, there's more to come. In May, Biden's Environmental Protection Agency (EPA) effectively proposed to close power plants that keep electricity flowing affordably and reliably. As a key part of Biden's promise of a "zero-carbon" power grid by 2035, EPA's plan will undermine the stability of the grid, raise electricity prices for consumers, and compromise America's energy security.

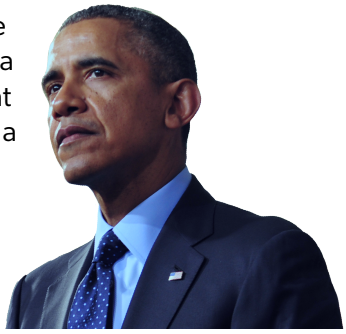
Biden's EPA is following the Obama Administration's brazen attempt to control the nation's electric grid using an obscure and rarely invoked authority under the Clean Air Act. The plan is to require emissions controls that are commercially unavailable at-scale and technologically infeasible for power plants that use coal and natural gas.

Last year, the Supreme Court found that the Obama EPA's "Clean Power Plan" violated the Clean Air Act, expressly invoking for the first time the "major questions doctrine," according to which issues of major political and economic significance can only be addressed by executive branch agency rules if Congress has clearly and explicitly authorized them to do so. Biden's EPA is thumbing its nose at the Supreme Court, having issued a proposed rule similar to the scope and ambition of the Obama Clean Power Plan.

While its particulars may differ, the intent of the Biden proposal is the same: assume federal control of the dials of electricity generation, turning them in directions that favor specific renewable energy such as wind and solar, and penalize fossil fuels such as natural gas and coal. Congress never authorized this, as the Supreme Court rightly concluded, but Biden's EPA persists as if no one has spoken a word about it. Meanwhile, consumers could end up paying hundreds of billions of dollars for this regulatory nightmare.[1]

Elections have consequences, as the saying goes—and the 2024 elections may determine the fate of Biden's Clean Power Plan 2.0. Or, if past is prologue, the Supreme Court could accomplish the same thing. Either way, the hope is that Biden's climate zealotry crashes against a political and legal brick wall.

I. INTRODUCTION: "A PHONE & A PEN"



In the line that would define his legacy, President Obama told his Cabinet in 2014 that "I've got a pen and I've got a phone"—meaning, if Congress failed to pass legislation he favored, he would simply enact it by executive fiat.[2]

Initially, Obama scored some early legislative victories. In 2009, the House, by a mere 7 votes, passed the infamous, Obama-backed Waxman-Markey cap-and-trade bill, "a 1400-page monstrosity[3]" —in Sen. John McCain's (R-AZ) immortal words—that would have thrown large segments of the American economy under the federal jackboot. "We passed transformational legislation which takes us into the future," boasted Speaker Nancy Pelosi (D-CA).[4]

Cap-and-trade legislation matched the ambition of Obamacare (passed in 2010). It sought to control, and in some cases destroy, significant segments of America's energy industry. After it passed the House, prognosticators said it would easily clear the Senate, where Democrats were just three votes shy of the 60 needed to break a filibuster. But a funny thing happened in

[1] https://www.youtube.com/watch?v=QMZuhj2_Xc8
[2] https://www.politico.com/story/2014/01/obama-state-of-the-union-2014-strategy-102151
[3] https://www.newyorker.com/magazine/2010/10/11/as-the-world-burns
[4] https://www.politico.com/story/2009/06/house-passes-climate-change-bill-024232

2010: even though Democrats controlled the House, Senate, and White House, several moderate, red-state Democrats denounced cap-and-trade as too costly, and then killed it in committee.

This put an end to Obama's climate change ambitions. No chance that he could achieve his three-fold goal, articulated on the campaign trail in 2008: "Under my plan for a cap-and-trade system": 1) coal plants would "go bankrupt"; 2) "electricity rates" would "necessarily skyrocket"; and 3) then renewable energy would become "the profitable kind of energy."[5] Or so he thought.

Instead of legislation, Obama used his phone, and more crucially, his pen to write his reckless climate agenda using the EPA. The late Rep. John Dingell (D-MI), for decades one of the most powerful members of Congress, described Obama EPA's forthcoming climate regulations as a "glorious mess."[6] He was right. As one attorney testified to Congress in 2010, "Given the central role of fossil fuel energy in the nation's life, EPA authority to impose GHG regulation means that EPA has authority over the American economy in a way that no other environmental statute gives it."[7]

In 2009, in part to goad Congress to pass cap-and-trade, EPA issued a finding under the CAA that greenhouse gas emissions from new motor vehicles "endanger public health and welfare." This "endangerment finding" required EPA, for the first time, to regulate carbon dioxide emissions from cars and trucks under the CAA.

But EPA wasn't done—that finding served as the starting point for a plan to subject major sectors of the American economy to greenhouse gas regulations. After first addressing tailpipes (which was only the first round of this kind of regulation), EPA moved to power plants. In 2014, it proposed the so-called "Clean Power Plan" (CPP), initiating a political and legal drama straining not just the electricity sector, but the very limits of executive authority under the CAA and the Constitution. That drama continues to this day.

BIDEN RESURRECTS THE CLEAN POWER PLAN

The CPP was breathtaking in scope: EPA sought centralized control of the nation's electric grid, using an obscure and rarely invoked section of the Clean Air Act.[8] In effect, the CPP was designed to shift electric generation from coal and natural gas to renewables. As the Department of Energy's Energy Information Administration (EIA) noted in its analysis of the CPP: "Switching from coal-fired generation to natural gas-fired generation is the predominant compliance strategy as implementation begins, with renewables playing a growing role in the mid-2020s and beyond."[9]

The unprecedented nature of the CPP prompted an unprecedented reaction from the Supreme Court. In 2016, the court blocked the CPP's implementation.[10] This was the first time the Supreme Court "has ever issued a stay on regulations before an initial review by a federal appeals court."[11]

Last year, in response to a lawsuit joined by more than two dozen states,[12] the Court issued the coup de grace

---

[5] https://www.pbs.org/newshour/show/what-happened-to-democrats-energy-climate-change-legislation-plans; https://www.youtube.com/watch?v=xaLjS22_-6Y
[6] https://www.wsj.com/articles/SB120795796121309347
[7] https://www.sourcewatch.org/images/a/ad/House_Testimony.pdf
[8] Section 111(d), 42 U.S.C. § 7411(d)
[9] https://www.eia.gov/analysis/requests/powerplants/cleanplan/
[10] https://www.documentcloud.org/documents/2709346-15A773-West-Virginia-v-EPA-Order-c1.html?embed=true&responsive=false&sidebar=false&text=false.
[11] https://www.americanbar.org/groups/litigation/committees/environmental-energy/practice/2016/021716-energy-supreme-court-stays-epas-clean-power-plan/
[12] This number varied over the course of several years. Parties that filed petitions challenging the CPP included 26 states. WV and TX spearheaded a coalition of 24 state petitioners in filing the lead case. OK, ND, and MS filed their own petitions. The state of NV, while not a petitioner, filed a brief supporting the petitioners, raising the number of states opposing the CPP to 28. And CO switched sides after it elected a Democratic Attorney General. https://www.everycrsreport.com/reports/R44480.html#_Toc517770112

in a landmark case, West Virginia v. EPA.[13] Along with striking down the CPP (and affirming the Trump Administration's administrative repeal of it), the Court propounded the "major questions doctrine," which serves, in effect, as a profound rebuke, and future restraint, on EPA's—and other federal agencies'—feverish regulatory ambitions. As the Court majority explained:

> Under our precedents, this is a major questions case. In arguing that Section 111(d) empowers it to substantially restructure the American energy market, EPA "claim[ed] to discover in a long-extant statute an unheralded power" representing a "transformative expansion in [its] regulatory authority." It located that newfound power in the vague language of an "ancillary provision" of the Act, one that was designed to function as a gap filler and had rarely been used in the preceding decades. And the Agency's discovery allowed it to adopt a regulatory program that Congress had conspicuously and repeatedly declined to enact itself. Given these circumstances, there is every reason to "hesitate before concluding that Congress" meant to confer on EPA the authority it claims under Section 111(d).[14]

But no matter. For President Joe Biden, it's old home week, and he's decided to resurrect his old boss's plan. In fact, his new plan is central to his pledge to reduce greenhouse gas emissions by 50-52 percent by 2030 and force a "zero-carbon" electric grid by 2035.[15]

In the face of West Virginia, Biden's EPA is blatantly flouting the unambiguous judicial command to stay within the statutory limits Congress prescribed. Instead, the agency is proposing new emissions standards that can't be achieved, at a cost that will squeeze consumers during high inflation, compromise grid reliability, and dangerously increase America's energy dependence on China, all while having virtually no impact on climate change.

Congress never authorized any of this. But Biden and his bureaucratic minions couldn't care less.

II. "A LONG EXTANT STATUTE... AN UNHERALDED POWER"

The Biden EPA's successor to the CPP lacks a catchy name—probably because any name conjured by EPA bureaucrats would inevitably become an epithet. Instead, it's been laboriously titled, "New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil-Fuel Fired Electric Generating Units; Emissions Guidelines for Greenhouse Gas Emissions From Existing Fossil-Fuel Fired Electric Generating Units."[16] We'll stick with "CPP 2.0."

The new proposal does not attempt, as the CPP did, to *explicitly* requisition the electric grid outright by imposing generation-shifting as the *form* of the regulation; but it does seek to *de facto* prevent construction of new natural gas power plants and close existing plants that use coal and natural gas, so it plainly has the same policy *goal* as the CPP.

EPA's "impossible proposal," as the attorneys general of 21 states commented, "will leave coal-and natural-gas plants with no other option but to close."[17] This will mean a less reliable grid and higher costs for consumers. All during a time of increased population growth and energy demand. In the end, the proposal's clear intent, while more subtle but nonetheless still contrary

---

[13] Here's a more detailed picture of the rule's legal journey, courtesy of the Congressional Research Service: "In 2015, EPA promulgated the Clean Power Plan under Section 111(d) authority to limit carbon dioxide emissions from existing fossil-fueled power plants. In 2019, EPA repealed the Clean Power Plan and promulgated new emission guidelines in the Affordable Clean Energy Rule. See EPA, "Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations," 84 Federal Register 32521, July 8, 2019. Various states and stakeholders challenged the Affordable Clean Energy Rule and Clean Power Plan repeal. On January 19, 2021, a three-judge panel of the D.C. Circuit vacated the ACE Rule and the CPP repeal in a split decision, though it later granted EPA's request not to reinstate the CPP until EPA considers a new rulemaking action."

[14] https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf, p. 20

[15] https://www.eenews.net/articles/is-bidens-2035-co2-goal-still-achievable-what-studies-say/

[16] https://www.federalregister.gov/documents/2023/05/23/2023-10141/new-source-performance-standards-for-greenhouse-gas-emissions-from-new-modified-and-reconstructed. The proposed rule is a package that also included emission standards for new power plants and a repeal of the Trump Administration's "Affordable Clean Energy Rule," which was the Trump EPA's replacement of the CPP. Its full title is, "New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil-Fuel Fired Electric Generating Units; Emissions Guidelines for Greenhouse Gas Emissions From Existing Fossil-Fuel Fired Electric Generating Units; Repeal of the Affordable Clean Energy Rule."

[17] Comments on the Proposed Rulemaking Titled "New Source Performance Standards for GHG Emissions from New and Reconstructed EGUs; Emission Guidelines for GHG Emissions from Existing EGUs; and Repeal of the Affordable Clean Energy Rule" by the Attorneys General of the States of WV, AL, AR, GA, ID, IN, IA, KY, LA, MS, MO, MT, NE, NH, OH, OK, SC, SD, TX, UT, VA (Docket No. EPA-HQ-OAR-2023-0072).

to West Virginia, is "to reshape the utility sector in the guise of pollution control."[18]

To understand the audacity of what the Biden EPA is undertaking, one must understand the regulatory authority being invoked. In West Virginia, the Supreme Court noted that the CPP was based on a "rarely used" section of the Clean Air Act, Section 111(d).[19] That is true. In the 53-year history of the CAA, it has been used just "a handful" of times, to "fill the gaps" in other, more comprehensive, CAA programs.[20] Nonetheless, Biden's EPA has proposed a rule just as outrageous as the CPP, under the very same regulatory authority that precipitated the High Court's rebuke last year.

Here's how that particular authority works. "Properly construed," Section 111(d) is about establishing a "system of emissions reduction," in this case for power plants. Those systems have to be "adequately demonstrated," and EPA makes that determination after considering cost, energy requirements, and other factors. "Only *then* may EPA proceed to determine which of these adequately demonstrated systems of emission reduction is the 'best system of emission reduction' (BSER)."[21]

Under the CPP, EPA illegally tried to mandate generation-shifting from fossil fuels to renewables. The architects of the CPP argued that the electric grid is a "system" that could be manipulated under the CAA to fulfill EPA's grand plans for "the energy transition." But with that option foreclosed, EPA is moving elsewhere, to what it thinks is safer legal ground, the actual pollution source—in this case, the power plant.

But the agency is operating in its own strange universe. For EPA, an "adequately demonstrated" system of emissions reduction for power plants is one that will potentially be widely available and cost-effective at *some point far in the future—15 years from now,* in fact. This view is bizarre, and EPA's reading of the statute will surely run straight into a judicial buzzsaw.

This rule will almost certainly be litigated. It could land, as with the CPP, before the Supreme Court, but it must first pass muster with the District of Columbia (D.C.) Circuit Court of Appeals. And that court "has never blessed anything that has looked anything like this 15-year plan," said Justin Schwab, former deputy general counsel of EPA. "EPA can't identify any prior rule that it has done where its projection of when the systems of emissions reduction will become fully available stretches out nearly this far."[22]

The correct understanding of "adequately demonstrated" is, "It'll soon be widely available, and it has a proven track record."[23] Not so for this EPA. Looking into its crystal ball, the agency's regulatory seers propose emissions reductions for technologies that are unambiguously unworkable today, and there's no guarantee they'll be "adequately demonstrated" in the 2030s or the 2040s. EPA surely knows this, but agency bureaucrats are attempting to send market signals via regulation, hoping to aggressively tip the scales against fossil-fuel power plants.

Before delving into those non-commercialized technologies, let's examine the heart of EPA's proposal, for both new and existing fossil-fuel fired power plants:

- **Existing baseload coal-fired plants must reduce GHG emissions by 90% by 2040 or retire.** Baseload coal plants—i.e., those that operate nearly continuously—expecting to operate in 2040 and beyond would have to reduce GHG emissions by 90% by 2030 through the use of so-called, and largely untested, "carbon capture and sequestration" (CCS) technology.

---

[18] Comments of the Center for Environmental Accountability, submitted August, 8, 2023, p. 1
[19] Section 111… (d) Standards of performance for existing sources… (1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 110 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or [section 112(b); emitted from a source category which is regulated under section 112] of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. CAA § 111(d), 42 U.S.C. § 7411(d), as modified by 1990 CAA §§ 108(g), 302(a), 104 Stat.2465, 2574.
[20] https://policyintegrity.org/files/publications/2014-5_Zevin.pdf, p. 10
[21] Ibid, at 14. p. 4
[22] https://insideepa.com/climate-news/lawyers-fault-epa-s-reliance-dc-circuit-cases-power-plant-ghg-plan.
[23] Ibid, at 14. p. 5

- **New and existing natural gas-fired plants would have to make significant GHG reductions.** (Note: EPA exempts smaller natural gas "peaker plants" typically used during periods of high electricity demand.)
    - Under CPP 2.0, existing gas units that are more than 300 MW with a capacity factor of 50% or more will have to reduce emissions either by:
        1. Installing CCS technology to capture 90% of carbon emissions by 2035; or
        2. Blending so-called "green" hydrogen at the plant to reach a 30% hydrogen mix by 2032 or 96% hydrogen mix by 2038.
    - The proposed rule also covers intermediate and baseload new natural gas plants. Intermediate plants (that run 20% to 50% of the time) will need to add 30% hydrogen into their fuel mix by 2032. Baseload plants that operate 50% of the time or more will be subject to the same requirements as existing natural gas-fired plants.
    - Notably, "new" plants are defined as those that commence construction or modification after the date of the *proposal* (May 23, 2023), not the final rule, is published in the *Federal Register*. These plants won't have any new requirements until the final rule is published and takes effect, but the date of the proposal determines *which* plants will be subject to which requirements.

In May, upon release of CPP 2.0, EPA Administrator Michael Regan proudly boasted that "EPA's proposal relies on proven, readily available technologies to limit carbon pollution." Proven? Readily available? False and false.

For starters, let's look at carbon capture and storage (CCS) technology. In theory, CCS has been deemed the technological silver bullet for fossil fuels, allowing their continued use while preventing the greenhouse gases that result from combusting them from entering the atmosphere. Here's how one leading utility describes the technology: "[CCS] is…a three-step process, involving: capturing the carbon dioxide produced by power generation or industrial activity, such as steel or cement making; transporting it; and then storing it deep underground."[25]

Sounds great; except for EPA, there's a huge problem: CCS likely won't be commercially available and affordable before 2040, if ever. And where it's been tried, it has largely failed. In a scathing letter to EPA, nearly 40 Republican senators noted that, today, "CCS is not commercially operational for any coal or natural gas plant in the United States." But here's the kicker:

> The Agency cites five "successful applications" of carbon capture for fossil-fuel fired power plants in the [CPP 2.0] proposal—one located in Canada, one proposed in Scotland, and three located in the United States. Of the projects cited in the proposal, ***none*** would meet the EPA's requirement in the proposal for 90 percent of emissions to be captured. (Emphasis in the original.)

"In fact," they continued, "the two successful applications on domestic coal plants that the EPA cites are closing and the Agency readily admits the referenced natural gas plant is no longer capturing carbon dioxide off the slipstream." (Emphasis in the original.)

EPA points to SaskPower's "Boundary Dam" 110-Megawatt (MW) lignite coal plant (a small unit by industry standards) in Canada as an example of CCS technology that is "proven" and "readily available." "While successfully demonstrating the commercial-scale feasibility of 90 percent capture rates," EPA avers, "the plant has also provided valuable lessons learned for the next generation of capture plants."[26]

Not so, says the company. In a response to EPA, SaskPower wrote, "In the [CPP 2.0], there is a reference to SaskPower's Boundary Dam Unit 3 CCS Facility 'successfully demonstrating the commercial-scale feasibility of 90 percent capture rates.' As the owner and operator of this facility, we are providing the

---

[24] "One way the energy industry measures the reliability of power plants is by regularly calculating capacity factors. Capacity factor is the measure of how often a power plant runs for a specific period of time. It's expressed as a percentage and calculated by dividing the actual unit electricity output by the maximum possible output. This ratio is important because it indicates how fully a unit's capacity is used. Capacity factors vary considerably by plant and fuel type." https://nuclear.duke-energy.com/2015/02/18/capacity-factor-a-measure-of-reliability

[25] https://www.nationalgrid.com/stories/energy-explained/what-is-ccs-how-does-it-work#

[26] https://www.federalregister.gov/documents/2023/05/23/2023-10141/new-source-performance-standards-for-greenhouse-gas-emissions-from-new-modified-and-reconstructed, at 33291

following correction to the emissions performance of the Boundary Dam Unit 3 CCS Facility…SaskPower's CCS facility is not capturing 90 per cent of emissions from Boundary Dam Unit 3, though that is its nameplate capacity."[27]

Utility executives know that Biden's 2035 goal of a zero-carbon grid, using CCS and renewables, won't work. "While we share the president's goal of delivering 100% carbon-free electricity to our customers, it is important to achieve this goal in the right way," said Xcel Energy. "Our strategy is subject to the guardrails of affordability and reliability." Xcel went on to say that technologies needed to eliminate carbon emissions entirely "are not available today," meaning that Xcel "must employ dispatchable generation using today's technologies, primarily natural gas-fired generation." Obviously, if EPA gets its way, that won't happen.

But don't take their word for it: Biden's Special Presidential Envoy for Climate, former Sen. John Kerry, also has a dim view of CCS. He recently stated, "But we don't have that at-scale yet. And we can't sit here and just pretend we're going to automatically have something we don't have today. Because we might not. *It might not work.*"[28] (Emphasis added.)

Of course, that may be the point.

"By requiring the best system of emission reduction for coal plants to install and operate CCS technology at a 90-percent carbon dioxide capture rate by 2030," the senators wrote, "the EPA is effectively requiring these plants to shut down."[29]

EPA's proposal requiring hydrogen as the best system of emissions reduction for natural gas plants is similarly absurd. Here, EPA calls for "the most emission-constrained version of hydrogen: that produced only by renewable energy-powered electrolysis."[30]

Hydrogen has been discussed as an alternative fuel to reduce GHGs, one that can be either mixed with (to reduce its carbon intensity), or completely replace, natural gas—at least in theory. As the Department of Energy explained, "Hydrogen can be produced from diverse domestic resources with the potential for near-zero greenhouse gas emissions." It "holds promise for growth in both the stationary and transportation energy sectors."[31]

"Holds promise…" That's a key phrase. America's Clean Power CEO Jason Grumet expressed a similar view, when he said, "This is a conversation about an industry that does not yet exist, [but] that we all have great ambitions for."[32] Again, as noted above, EPA is proposing that baseload natural gas plants that don't choose the carbon-capture compliance pathway must employ 96-percent clean hydrogen co-firing by 2038. "Ambitions" and "promise" are nice, but they don't meet the legal requirements of the Clean Air Act.

Another important consideration, which EPA glosses over, is that hydrogen must be transported from where it's produced to, in this case, the power plant. That requires hydrogen infrastructure—e.g., pipelines—which is largely non-existent, and "will face years to decades of permitting and investment before it could be even built, further demonstrating that this technology has not been adequately demonstrated."[33]

In June, Biden's own Department of Energy acknowledged "remaining challenges" for wide adoption of hydrogen. They include the "lack of ubiquitous hydrogen distribution infrastructure, lack of manufacturing at

---

[27] https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0072-0687
[28] https://apnews.com/article/oil-gas-producers-climate-change-emissions-kerry-ecce8b197bae7bdb5caf9ec455eedcaa
[29] https://www.epw.senate.gov/public/index.cfm/2023/8/capito-38-other-senators-call-on-epa-to-withdraw-harmful-power-plants-regulations.
[30] Ibid. at 29
[31] https://afdc.energy.gov/fuels/hydrogen_benefits.html
[32] Ibid. at 29
[33] Ibid. at 29

scale, cost, durability, reliability, and availability challenges in the supply base across the entire value chain." "At present," DOE continues:

> producers also struggle to find off-takers with sufficient hydrogen demand sited within an affordable distance to hydrogen production who are willing to sign long-term contracts. Stakeholders on the production, demand, and financing sides highlight hesitancy to commit resources due to lack of price transparency and risks in clean hydrogen supply."[34]

No wonder even EPA, in its zeal to frame this measure as having crossed the "adequately demonstrated" threshold, still proposes a fifteen-year pathway for adoption of the 96% co-firing regulatory phase.

III. GRID UNRELIABILITY

EPA's obstinate refusal to acknowledge the shortcomings of these technologies not only ignores the law, but the tenuous stability of the nation's electric grid, which the CPP 2.0 will surely worsen to the detriment of consumers and energy security.

A quick look at the grid shows a dire picture. "We are facing an absolute step-change," said John Moura, director of reliability assessment and performance analysis for the North American Electric Reliability Corporation (NERC), one of the entities Congress created to keep the lights on. Over the past five years, he said, NERC has seen a "steady deterioration in the risk profile of the grid. The system is close to the edge…"

In May, NERC issued its "Summer Reliability Assessment," which analyzes grid conditions from June through September. NERC found that, under normal conditions, everything would be fine. But for the grid, *it's the abnormal periods that count*—how does it respond to storms and stress? NERC's view is, these these days, not so well. "All areas are assessed as having adequate anticipated resources for normal summer peak load and conditions," NERC found (emphasis added). "But most of the country will "face risks of electricity supply shortfalls during periods of more extreme summer conditions."[36]

Policymakers and grid watchers were alarmed. "This report is an especially dire warning that America's ability to keep the lights on has been jeopardized," National Rural Electric Cooperative Association CEO Jim Matheson said in a statement.[37]

What was the source of NERC's concern, and what is it now? Baseload, fossil-fuel fired power plants—the very same plants EPA wants to extinguish with CPP 2.0—are closing down too quickly. In their stead, utilities are building intermittent wind and solar units—they only work when the wind blows and the sun shines—which are putting grid reliability at risk. Without baseload power, consumers will be left in the dark. ("Where can consumers turn when the sun isn't shining, and the wind isn't blowing?" the state of West Virginia asked in its comment letter on CPP2.0. The answer, as everyone except EPA seems to know, is: coal-fired power plants and *natural gas turbines*.)[38]

In parts of the Midwest, NERC pointed out that, "wind generator performance during periods of high demand is a key factor in determining whether there is sufficient electricity supply on the system to maintain reliability." Moreover, in the Southwest, if wind output falls below normal, the grid operator "can face energy challenges in meeting extreme peak demand or managing periods of thermal or hydro generator outages." And in Texas, "dispatchable generation may not be sufficient to meet reserves during an extreme heat wave that is accompanied by low winds."[39]

---

[34] https://www.hydrogen.energy.gov/docs/hydrogenprogramlibraries/pdfs/us-national-clean-hydrogen-strategy-roadmap.pdf, at p. 24.
[35] https://www.utilitydive.com/news/most-of-us-faces-elevated-risk-of-summer-blackouts-extreme-heat-nerc/650531/
[36] https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2023.pdf
[37] Ibid. at 34
[38] West Virginia comments
[39] Ibid. at 35

Seasonal Risk Assessment Summary	
High	Potential for insufficient operating reserves in normal peak conditions
Elevated	Potential for insufficient operating reserves in above-normal conditions
Low	Sufficient operating reserves expected

Figure 1: Summer Reliability Risk Area Summary

For the most part, the country this summer narrowly—just narrowly—escaped disaster. For example, in September, the Electric Reliability Council of Texas (ERCOT), the state's grid operator, triggered its emergency operations, bringing it closer than it had been all summer "to a worst-case scenario of ordering rotating power outages."[40]

Overall, ERCOT asked Texans to conserve energy 10 times this summer because of the high demand for power. Why? Wind comprises 25 percent of Texas's electricity production, and the wind forecast was often low when power demand was high. "Wind power is Texas' second largest source of electricity behind natural gas," Reuters reported, "so any prolonged drop in wind generation may leave the ERCOT system under strain just as the peak demand season kicks off."[41]

Against this backdrop, it would be pure insanity for EPA to persist in its obsession, dating back at least to 2014, to close the power plants that keep the lights on. But it persists. And one would think the plain truth of the grid's dangerous condition would force EPA to consult with reliability experts, such as those at NERC and the Federal Energy Regulatory Commission (FERC), the latter of which has been charged by Congress "with overseeing the promulgation of the mandatory standards that ensure the reliable operation of the bulk-power system." "In a word," wrote FERC Commissioner James Danly, "FERC is the agency with jurisdiction and knowledge necessary to ensure that the bulk electric system functions and that it has sufficient generation to meet demand."[42]

But EPA *didn't* consult FERC—meaning, the *actual voting members* of the body. It did discuss the CPP 2.0 with FERC commission *staff*, but the staff "did not provide either modeling or a substantive review of the Proposed Rule's potential reliability effects."[43] Commissioner Danly, in his comment letter to EPA, then went right to the heart of the matter:

> Every change to the bulk electric system requires an engineering study, a lengthy and complex process. The EPA is contemplating policies that promise to alter the makeup of the bulk electric system drastically and on an abbreviated timeline. When proposing a rule with such profound consequences, responsible decision-making requires hard data. Absent input from the Commission, based on detailed analyses by the Commission staff, it is nearly impossible to imagine that the EPA could be in a position to reach any informed conclusion regarding the reliability consequences of its Proposed Rule.[44]

Not only is EPA's indifference to the consequences of its actions irresponsible and reckless, but it's also potentially illegal. Under Section 111 of the CAA, EPA must "take into account the cost of achieving [the emission] reduction and any nonair quality health and environmental impact *and energy requirements*."[45] (Emphasis added.) As West Virginia (and other states) noted in comments on EPA's proposal, "energy requirements like a rule's consequences for grid reliability are especially important when, as here, EPA is regulating power plants directly."[46] By failing to provide a meaningful grid-impact analysis, EPA has in effect ignored this requirement of the law.

---

[40] https://www.texastribune.org/2023/09/06/texas-ercot-power-grid-rolling-blackouts/
[41] https://www.reuters.com/markets/commodities/reduced-wind-generation-puts-texas-power-system-test-2023-06-21/
[42] https://www.ferc.gov/news-events/news/comment-commissioner-james-p-danly-epas-proposed-new-source-performance-standards.
[43] Ibid. at 40
[44] Ibid. at 40
[45] 42 U.S.C. § 7411(a)(1)
[46] West Virginia et al.

IV. DEPENDENCE ON CHINA

With law and electric reliability as an afterthought (if that), Biden's EPA is forging a horrific mandate that will surely endanger America's national security. That's because forcing the retirement of coal and natural gas power plants means, or so the Biden Administration believes, greater reliance on renewable energy—and therefore, greater economic reliance on Communist China.

The simple fact, detailed in two previous studies by Power the Future, is that China dominates the global market for the critical minerals and rare earth elements needed to manufacture batteries and the basic components of wind turbines and solar panels. Biden's energy team asserts time and again that the energy transition to renewables will necessarily mean energy independence for America—because it will no longer be subject to the whims of global oil markets.

But as energy analyst Mark Mills recently testified before Congress, "the claim that renewables are geopolitically superior is exposed by one now well-known fact: China has a 40 to 80 percent market share in producing or refining energy minerals needed to build renewable machinery. That is a strategic dominance roughly double OPEC's market share in oil."[47]

Biden officials, especially those at EPA, speak endlessly about the "energy transition,"[48] which in simple terms means "the global energy sector's shift from fossil-based systems of energy production and consumption — including oil, natural gas and coal — to renewable energy sources like wind and solar, as well as lithium-ion batteries."[49]

In their view, modern life should and will be powered by renewable energy. That sounds nice in theory, but the enormous cost, complex logistics, permitting challenges, and rapid technological progress required to make that happen apparently hasn't crossed the minds of EPA officials.

According to an article in the scientific journal Nature, the transition to a low carbon society is "a change that will require vast amounts of metals and minerals." More to the point, "mineral resourcing and climate change are inextricably linked, not only because mining requires a large amount of energy, but also because 'the world cannot tackle climate change without adequate supply of raw materials to manufacture clean technologies.'"

EPA omits any serious discussion of this critical issue—that is, how will America become "energy independent" if the resources needed for a "low-carbon society" must be obtained from one of our foremost global adversaries, China? "Unfortunately," wrote the Institute for Energy Research, "the United States is not a mecca for wind and solar or battery manufacturing, which means that the United States will need to import technology from China and Europe, making the United States dependent on a communist country for its solar panels and rare earth and critical metals needed in the production of wind turbines and solar panels."[50]

CONCLUSION

Greater, and more dangerous energy dependence on China; an unreliable electric grid prone to blackouts and brownouts; blatant violation of the law passed by Congress and established by the Supreme Court—these will be the grim results if EPA's CPP 2.0 takes effect.

As noted, if finalized in its current form, EPA's rulemaking will likely travel to the Supreme Court, which could, as with the CPP before it, relegate it to the ash heap of history. But there's no guarantee that will happen. Only a change in political leadership in the White House can ensure that EPA follows what the law requires, and that it stays accountable to the people who elect the representatives who pass laws in the first place.

---

[47] https://www.commerce.gov/news/press-releases/2022/12/department-commerce-issues-preliminary- determination-circumvention
[48] https://www.energy.gov/articles/remarks-delivered-secretary-granholm-president-bidens-leaders-summit-climate
[49] https://www.spglobal.com/en/research-insights/articles/what-is-energy-transition
[50] https://www.instituteforenergyresearch.org/the-grid/bidens-carbon-neutrality-plan-for-electric-utilities-is-not-realistic/

In the meantime, it is essential that Congress exercise its oversight function to stop EPA from advancing this disastrous rule. Hearings, requests for information and meetings, and subpoenas, if necessary, must all be employed to deter EPA from implementing Joe Biden's climate hysteria.