

U.S. SENATE ENVIRONMENT AND PUBLIC WORKS
COMMITTEE FIELD HEARING

Beckley, West Virginia

The senate environment hearing was taken
on March 23, 2015 at 9:30 a.m., at
215 Main Street, Beckley, West Virginia.

ELITE COURT REPORTING, LLC
5010 Dempsey Drive
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A P P E A R A N C E S

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SENATOR CAPITO: I want to thank Congressman Evan Jenkins for joining me here today. It's great to be in Raleigh County. I want to thank the Raleigh County Commission, the Sheriff's Office and Judge Kirkpatrick for letting us use your chambers. I want to thank all of you for coming. I want to thank the witnesses for being here today.

This is the first hearing that I've chaired as I've come back home as a United States Senator. But it will not be the last one, I can tell you that. This issue we have before us, which is the Greenhouse Gas Rule and the Clean Air Rule, falls right squarely in my subcommittee on the energy -- or the Environment of Public Works Committee in the Senate. I'm going to be chairing that subcommittee. So all the data that we collect in our hearings is extremely valuable to us on the committee. And I want to thank everybody for their participation. But it's no more important to all the folks that live in

1 and around West Virginia, particularly
2 Southern West Virginia.

3 Last month, EPA acting
4 administrator -- assistant administrator,
5 Janet McCabe, came before our committee,
6 our EPW committee, to discuss the agency's
7 proposed carbon regulations for new and
8 existing power plants. I asked her to
9 explain why has EPA not had a public
10 meeting on its proposed climate rules in
11 West Virginia. We asked for that. I
12 wasn't alone. Evan asked for that -- the
13 Congressman asked for that -- many of us
14 did -- to ask the EPA to come to West
15 Virginia.

16 And I was kind of surprised by her
17 response. Because she told me that the
18 public hearings were held where the agency
19 officials were - and this is a direct
20 quote - comfortable going. That was
21 exceedingly unimpressive to me. While it
22 may be uncomfortable for EPA officials to
23 face the coal miners whose livelihoods and
24 whose communities are threatened by these

1 regulations, I think West Virginians
2 deserve to have their voices be heard. So
3 that's why I'm here today. The public
4 hearing on the Environment and Public
5 Works is live streaming on our website, so
6 it will be seen across the country.

7 We're going to hear the voices of
8 West Virginians on the devastating impact
9 on the regulations of our fellow West
10 Virginians, because we know we receive
11 95 percent of our power from coal-fired
12 power plants. The West Virginia coal
13 industry supports families, strengthens
14 our national security and affordably
15 powers not only our state, but provides
16 affordable electricity to our neighbors.

17 West Virginia exports more than half
18 of the electricity that we produce. And
19 Charles can back me up on that. Just last
20 week, AEP warn notices to -- issued warn
21 notices to employees at three West
22 Virginia power plants; the Kanawha River
23 plant in Glasgow, the Sporn plant in New
24 Haven and the Cameron plant near

1 Moundsville. All three plants will close
2 within two months. These closures are
3 ahead of schedule and early closures
4 basically because of the EPA's MATS Rule,
5 which is a previous rule different than
6 the one we're discussing today, but still
7 has a great impact.

8 The upcoming EPA regulations for
9 carbon emissions for power plants that we
10 are here to examine today will have even
11 more devastating impact. I have grave
12 concerns about these regulations. I'm
13 concerned about their cost; the cost to
14 the taxpayer, and the cost to the bill
15 payer.

16 Numerous studies by well-respected
17 economic analysis firms made clear that
18 the EPA has grossly understated the costs.
19 Findings from these reports show that
20 costs could go up to 479 billion over a
21 15-year period while causing double-digit
22 electric price increases in 43 states.

23 Over half of our country's power
24 comes from coal. And EPA has gone so far

1 to predict that by effectively eliminating
2 one half of our energy generation, we will
3 reduce electricity prices by 8 percent.
4 That just doesn't add up to me.

5 Here in West Virginia, our monthly
6 electric bills are roughly 23 percent
7 cheaper now than the national average
8 because coal is cheap, reliable and
9 plentiful. I'm very concerned that in
10 formulating these regulations, EPA has not
11 considered the impact on the reliability
12 of the grid.

13 We actually had a hearing on this
14 last week in our committee. That's one of
15 the reasons I'm very pleased to have
16 Charles Patton from Appalachian Power as
17 one of our witnesses. In his statement,
18 he does speak directly to the impact of
19 these rules on our ability to keep the
20 lights on.

21 We also have small business owner,
22 Charles Farmer, who will be here shortly.
23 I'm very interested to see how he has
24 borne the brunt of increased electricity

1 prices on his business operations, and how
2 it impacts him and his family and his
3 business.

4 And the United Mine Workers -- we're
5 pleased to have Mr. Gene Trisko who is
6 here to represent the brunt of the
7 president's war on coal in terms of the
8 effect it has on the UMW and coal miners
9 across the country.

10 So as we move forward, I'm also
11 concerned -- as we talk about emissions,
12 and the lowering of emissions, I'm
13 concerned that the United States is sort
14 of out front here -- not sort of out
15 front. We are out front. What are the
16 other nations doing? And is what we're
17 doing going to really make the impact that
18 those who are putting these forward hope
19 that it will?

20 So I think we're not rushing this.
21 There are legality issues. We'll get into
22 that today. But what we're doing is
23 really beginning to talk about the
24 economic impacts to our families where the

1 impact is most felt, and that's here in
2 West Virginia.

3 With that, I'm going to ask
4 Congressman Jenkins to make an opening
5 statement, and then we'll turn to the
6 witnesses.

7 CONGRESSMAN JENKINS: Thank you,
8 Senator. Good morning. And thank you for
9 the wonderful turnout and the interest.
10 Let me first start by thanking Senator
11 Capito for holding this important hearing.
12 She has been a steadfast voice for West
13 Virginia and continues to lead the fight
14 against the administration's regulatory
15 overreach. She's a real champion for our
16 cause.

17 I also want to thank her and her
18 staff for taking the initiative to hold
19 this important hearing so that the
20 committee can hear the voices from real
21 West Virginians, people who really care
22 about our state's future and understand
23 the issues that we are facing as a state.

24 As you know -- as Senator Capito

1 mentioned just a moment ago, her efforts
2 to try to encourage the EPA to take a
3 proactive position to come to West
4 Virginia. I too had that opportunity, and
5 questioned Administrator McCarthy just a
6 couple of weeks ago, and candidly begged
7 her to come to West Virginia to see the
8 real consequences of her agency's policies
9 and what they will have with regard to the
10 people of West Virginia. And as Senator
11 Capito has run into, she simply says no,
12 unwilling to come.

13 The EPA continues to overstep its
14 legal authority waging a war on coal.
15 And, yes, it is a war on coal that has
16 destroyed the livelihoods that we have
17 known for generations in West Virginia.

18 For example, the EPA is retroactively
19 vetoing already issued permits. The
20 permit for the mine in Logan County was
21 issued by the U.S. Army Corps of Engineers
22 after an intensive deliberative process.
23 Families in that area were counting on
24 those new jobs that the mine would help

1 provide and sustain.

2 But then four years later, the EPA
3 swooped in and retroactively vetoed this
4 already issued permit by the Army Corps of
5 Engineers. That was the first time in
6 history that the EPA has ever taken such
7 an action. But the effects of EPA's
8 decisions weren't limited to just the mine
9 operation. They also took away the
10 promise of good-paying jobs and more
11 affordable energy for West Virginians.

12 Coal is an abundant resource in
13 America. Why are we forsaking one of our
14 largest sources of affordable energy to
15 put ourselves at an economic disadvantage?
16 Why is the EPA forcing consumers to pay
17 more for electricity and for all the goods
18 and products that require electricity to
19 be produced.

20 The Clean Power Plan we're going to
21 be talking about today -- the focus of
22 today's hearing will bring even more
23 economic harm to West Virginia
24 communities. States are being asked by

1 the EPA to decrease emissions by an
2 unrealistic amount. They are being asked
3 to do it in an unreasonable time frame.
4 If they are unable to comply, they will be
5 fined. All sorts of stakeholder corps,
6 from utilities to state regulators to grid
7 operators have overwhelming concerns over
8 cost, reliability, transmission and grid
9 problems.

10 Prior to President Obama, coal
11 provided 48 percent of our nation's
12 electricity. Today we're at 40 percent
13 due to the Mercury Rules and others.
14 Under CPP, coal would be reduced to
15 30 percent. This has direct impact on
16 coal jobs. We have already suffered
17 disproportionately under this
18 administration's policies.

19 From 2009 through 2013, the State of
20 West Virginia lost nearly 9,000 coal jobs.
21 Americans deserve to know the full picture
22 before the EPA moves forward on this
23 aggressive and unprecedented plan. The
24 costs associated with CPP are staggering.

1 The U.S. Chamber of Commerce's Institute
2 for 21st Century Energy estimated that it
3 would lead to 224,000 fewer U.S. jobs on
4 average every year through 2030. Worse,
5 it would force U.S. consumers to pay
6 289 billion more for electricity in that
7 same time period.

8 The coal industry has gone through
9 highs and lows before and has recovered.
10 The difference now is that we have a
11 government pushing policies that is
12 picking winners and losers in industry and
13 forcing utilities to stop using coal.

14 I look forward to the hearing today
15 and hearing from the witnesses to hear the
16 issues that they are facing and to
17 understand things from their perspective.

18 Once again, I would like to thank
19 Senator Capito for inviting me to this
20 hearing. This is an important moment for
21 the Appalachian region, for Southern West
22 Virginia, for all of West Virginia and for
23 our country. This is an important moment.
24 It is critical that we work to preserve

1 our way of life for our children and our
2 grandchildren here in West Virginia.

3 Thank you, Senator Capito.

4 SENATOR CAPITO: Thank you,
5 Congressman. We will begin -- I would ask
6 the witnesses -- I think most of you have
7 probably testified. Your full statements
8 are submitted into the record. If you
9 could, give us a five-minute -- around a
10 five-minute synopsis of your full
11 statement. We'll start with that, and
12 then we'll go to questions.

13 So I'm going to start with Gene
14 Trisko who is counsel for the United Mine
15 Workers of America. Welcome.

16 MR. TRISKO: Thank you. Good
17 morning, Chair Capito and Representative
18 Jenkins. I'm Gene Trisko. I'm an
19 attorney in private practice. I'm here on
20 behalf of the United Mine Workers of
21 America whom I've represented in
22 environmental and climate matters for some
23 30 years.

24 The UMWA greatly appreciates this

1 opportunity to testify on the impacts of
2 EPA's proposed Clean Power Plan. This
3 proposed regulation is a neutron bomb
4 aimed directly at the heart of West
5 Virginia's economy and the coal miners,
6 communities, electric generators and
7 allied industries that depend on coal for
8 their livelihoods.

9 EPA's carbon rule proposes an overall
10 CO2 reduction equivalent to a 30 percent
11 cut from 2005 emissions with reductions
12 measured against each state's 2012
13 emission rate in pounds of CO2 per
14 megawatt-hour of fossil electric
15 generation. West Virginia is assigned a
16 20 percent reduction by 2030 based on the
17 combined building block approach that EPA
18 developed.

19 EPA's data indicate that West
20 Virginia's electric utilities and
21 independent power producers achieved a
22 20 percent reduction of CO2 emissions
23 measured in tons emitted between 2005 and
24 2012. In other words, if you were given a

1 fair baseline, you're there. You have
2 already achieved EPA's reduction.

3 EPA's proposed rule gives no credit
4 for these reductions because it uses a
5 2012 baseline for determining required
6 emission reductions.

7 EPA's regulatory impact analysis for
8 this rule shows total U.S. coal-generating
9 capacity declining from 317 gigawatts in
10 2010 to 195 gigawatts in 2020. That is an
11 overall reduction of 122,000 megawatts of
12 capacity. Of this total, 49 gigawatts can
13 be attributed to the Clean Power Plan with
14 the balance of 73 gigawatts due to
15 compliance with the 2011 Mercury Rule,
16 lower natural gas prices and other
17 factors.

18 EPA projects that the carbon rule
19 would reduce coal production in the
20 overall Appalachian region - this region
21 stretches from Pennsylvania to Alabama -
22 by 35 percent, from 140 million tons to
23 91 million tons in the year 2020. West
24 Virginia alone traditionally produces well

1 over 100 million tons of coal a year.

2 Under this rule, the entire Appalachian
3 region would produce 90 million.

4 The fundamental problems that the EPA
5 carbon rule poses for West Virginia are
6 twofold. First, the majority of West
7 Virginia's coal production is shipped to
8 other states that have even larger
9 emission reduction requirements than West
10 Virginia.

11 Second, as Senator Capito noted, the
12 majority of the coal-based electricity
13 generated in West Virginia is exported to
14 other states affected by the rule.

15 In 2013, West Virginia produced
16 116 million tons of coal. West Virginia's
17 electric utilities and independent power
18 producers consumed 30 million tons of coal
19 from all sources. That's equivalent to
20 just a quarter of the state's total coal
21 production. The rest of it goes somewhere
22 else. You have no control over that.

23 In 2014, West Virginia power plants
24 generated 88,000 gigawatt-hours of

1 electricity. Your total in-state retail
2 electricity sales were 29,000 gigawatts.
3 That's about one-third of total
4 generation. Two-thirds of it goes to
5 other states. You have no control over
6 it.

7 In short, there is no compliance
8 option for West Virginia, including
9 potential interstate agreements that can
10 effectively mitigate the adverse impacts
11 of the EPA rule attributable to the
12 compliance actions of other states.

13 The stakes for West Virginia's
14 economy and jobs are very high. Coal
15 mining in West Virginia generates more
16 than \$15 billion of gross state output.
17 Nearly \$4 billion of household income, and
18 75,000 direct and indirect jobs.

19 EPA's proposal for major expansions
20 of state energy efficiency and renewable
21 energy programs interfere with traditional
22 state authority and energy planning and
23 appear to be well beyond the agency's
24 authority under the Clean Air Act.

1 We are mindful in this regard of the
2 cautions recently raised by the Supreme
3 Court in UARG versus EPA concerning an
4 overly expansive interpretation of EPA's
5 authority to regulate greenhouse gases
6 under the Clean Air Act.

7 Finally, we do not know the extent to
8 which other nations will be willing to
9 commit to a truly global program of
10 greenhouse gas reductions. All
11 indications from the United Nation's
12 climate negotiation process point to an
13 extremely difficult outcome in Paris later
14 this year. It is doubtful that those
15 negotiations will lead to meaningful or
16 enforceable emission reduction commitments
17 by the developing countries that are now
18 the world's largest emitters of greenhouse
19 gases.

20 Thank you for the opportunity to be
21 here today.

22 SENATOR CAPITO: Thank you.

23 Now, I'd like to ask Charles Patton
24 to make his opening statement. Charles is

1 president of Appalachian Power Company.

2 Welcome. Thank you for being with us.

3 MR. PATTON: Thank you. Chairman
4 Capito, I'd like to thank you for inviting
5 me here today. And it's always a pleasure
6 to see you, Congressman Jenkins. We
7 appreciate the energy and enthusiasm which
8 you bring to represent the State of West
9 Virginia.

10 I appreciate this opportunity to
11 offer the views of Appalachian Power
12 Company on the carbon dioxide rules for
13 existing power plants that have been
14 proposed by the Environmental Protection
15 Agency.

16 Headquartered in Charleston, West
17 Virginia, Appalachian Power Company serves
18 approximately 1 million customers in West
19 Virginia, Virginia and Tennessee. We are
20 a subsidiary of American Electric Power.
21 AEP and its six other subsidiary utilities
22 deliver safe, reliable and affordable
23 electric service in eight additional
24 states, making AEP one of the nation's

1 largest generators of electricity.

2 Additionally, AEP's transmission
3 network is the nation's largest and most
4 robust with over 400,000 miles of
5 high-voltage transmission. As one of the
6 nation's largest utilities and one of the
7 nation's historically most coal-dependent
8 utilities due to our proximity to this
9 abundant and stably priced natural
10 resource, we have been active in the
11 conversation surrounding the
12 appropriateness of the Clean Power Plan as
13 a policy direction for reducing the carbon
14 footprint of the nation's electric power
15 supply industry.

16 I have filed some 26 pages of
17 testimony outlining our concerns. As a
18 major coal burner, I'm sure that you will
19 not find it surprising that Appalachian
20 Power and our parent company, AEP, has
21 serious concerns around the proposed EPA
22 plan.

23 In that 26 pages of testimony, I have
24 listed some concerns. Are EPA's technical

1 assumptions correct? Has the EPA
2 appropriately quantified the cost of its
3 proposal? Are there significant
4 reliability concerns that are not
5 receiving appropriate attention? Has the
6 EPA overreached its legal authority?
7 These are questions and issues that are
8 raised in my testimony.

9 Having reviewed a significant number
10 of the comments filed by states this past
11 fall, it is clear that the concerns
12 delineated a great deal in my testimony
13 are also shared in some form by the vast
14 majority of the states in this nation.

15 Therefore, in lieu of offering you a
16 laundry list of concerns, I would like to
17 share with you my personal experience
18 which gives me great pause regarding the
19 appropriateness of the EPA's proposal.

20 Approximately five years ago, I
21 became the president and chief operating
22 officer of Appalachian Power Company.
23 When I arrived, it was on the heels of a
24 \$2.2 billion capital spending program

1 placing scrubbers on our large baseload
2 coal-fired generating stations. At that
3 time, given the prevailing cost of
4 alternatives, it was the best option for
5 our customers. A position that was
6 endorsed by state regulators and key
7 stakeholders involved in the regulatory
8 approval process.

9 Despite being the least cost
10 solution -- yes, that's right, coal is the
11 least cost solution. The results were
12 electric rates that did increase on
13 average 40 percent. These investments and
14 resulting rate increases were common for
15 utilities with large coal fleets at that
16 time.

17 States like Louisiana, Tennessee,
18 Mississippi, Alabama and West Virginia
19 have the highest average residential
20 electric consumption rates in the nation.
21 There are logical reasons for this
22 outcome; the rural nature of these states,
23 the lack of retail natural gas in rural
24 areas for gas heating, and a strategic

1 cost advantage of electricity. And,
2 unfortunately, also the socioeconomic
3 factors related to the quality of the
4 housing stock in those states.

5 In West Virginia, over 400,000 low
6 income and middle income families spend
7 20 percent of their after-tax income on
8 energy. Approximately 25 percent of my
9 residential customers are delinquent on
10 their electric bills.

11 Additionally, many of my customers in
12 the metals industries which have
13 electric-intensive production processes
14 are also struggling to remain profitable.
15 In fact, the West Virginia legislature has
16 enacted legislation specifically targeting
17 its large energy-intensive industries to
18 help address this reality.

19 Congressman Jenkins, you were there
20 when that -- you were part of passing that
21 legislation.

22 But how much more can they afford?
23 I'm not sure. However, as we proceed in
24 addressing carbon, I would ask that this

1 committee and all of Congress consider the
2 following. Economics and existing EPA
3 regulations have resulted in a profile
4 where today 60 percent of AEP's generating
5 capacity is coal compared to well over
6 80 percent in 2000. By 2026, the
7 percentage is expected to drop to
8 45 percent.

9 Then if you go back to 2005, you will
10 find that our decrease to date in carbon
11 output is somewhere north of 21 percent,
12 not including future closures planned in
13 2015 as a result of our efforts to comply
14 with EPA's Mercury and Air Toxics
15 Standards.

16 APCO and AEP do not dispute the
17 legitimacy of pursuing policies that
18 reduce our nation's carbon footprint.
19 However, we would suggest to you that we
20 have grave concerns regarding the
21 affordability, technical assumptions and
22 need for the Clean Power Plan as it is
23 proposed.

24 Thank you very much.

1 SENATOR CAPITO: Thank you.

2 Our next witness is Dr. L. Jeremy
3 Richardson who is the senior energy
4 analyst, Union of Concerned Scientists,
5 Washington, D.C. And I understand your
6 father is in the audience. I want to
7 welcome him as well. Welcome,
8 Dr. Richardson.

9 MR. RICHARDSON: Thank you very much,
10 Senator Capito and Representative Jenkins.

11 As you said, I'm a senior energy
12 analyst at the Union of Concerned
13 Scientists. UCS is the nation's leading
14 science-based nonprofit working for a
15 healthy environment and a safer world. I
16 have a very unique perspective on the
17 issues before you today. As a scientist,
18 I understand the urgency to reduce carbon
19 emissions to protect the planet's climate.
20 As the brother, son and grandson of West
21 Virginia coal miners, the question of how
22 we go about tackling climate change is
23 deeply personal to me.

24 First, on behalf of UCS's more than

1 450,000 supporters, I want to say today
2 that we strongly support the Environmental
3 Protection Agency's efforts to limit
4 carbon emissions from power plants under
5 the Clean Air Act. Simultaneously,
6 however, we want to emphasize the need for
7 special consideration for the families and
8 communities that are facing the negative
9 consequences for the transition away from
10 coal.

11 Human-induced climate change is
12 already having impacts that are being felt
13 by people here in West Virginia, our
14 nation and around the world. If we
15 collectively fail to make deep reductions
16 in our carbon emission, we will greatly
17 increase the risks of serious economic,
18 health and environmental consequences from
19 accelerating sea level rise, storm surges,
20 heatwaves, drought, wildfires, frequent
21 heavy downpours and increase hurricane
22 intensity. These impacts are a direct
23 consequence of the increasing
24 concentration of greenhouse gases like

1 carbon dioxide in our planet's atmosphere
2 primarily caused by the fossil fuels that
3 we burn for energy.

4 These facts compel us to act and to
5 act decisively. In doing so, however, we
6 must recognize that some regions of our
7 country are facing a heavier burden than
8 others in this transition to a less
9 fossil-intensive electricity system.

10 The proposed Clean Power Plan
11 provides a sound and flexible framework
12 for reducing emissions from the power
13 sector. But it is not ambitious enough in
14 its overall result of a 30 percent
15 reduction in emissions by 2030.

16 Our analysis shows that EPA
17 significantly underestimated the potential
18 for renewables such as wind, solar and
19 geothermal energy resources that emit no
20 carbon and are already delivering safe,
21 reliable and affordable power to consumers
22 all around the country.

23 As we all know, the coal industry
24 faces challenging times. Many blame

1 environmental regulations entirely for the
2 downturn. But the truth is that
3 regardless of who occupies the White
4 House, the industry faces strong and
5 persistent headwinds. Multiple market
6 factors are making coal fired power too
7 expensive relative to other cheaper, less
8 polluting options like natural gas,
9 renewable energy and energy efficiency.
10 Thankfully, West Virginia has many assets
11 that it can leverage to diversify its
12 economy. But we must let go of the idea
13 that coal is all we've got.

14 Communities all around coal country
15 from Beckley to Welch to Pikeville are
16 eager to have this conversation. They
17 realize that times are changing and they
18 are calling for leadership. Over
19 200 people from a wide range of
20 perspectives attended a forum that UCS
21 organized in September of 2013 to talk
22 about the state's bright future.
23 Participants pointed to the state's
24 topnotch workforce, its natural resources,

1 of course, a multitude of opportunities
2 for recreation and tourism, emerging
3 opportunities in advanced manufacturing
4 and much more. The conversations have
5 continued from the ground up.

6 Williamson is remaking itself as a
7 healthy community focused on
8 sustainability. Communities across West
9 Virginia have been participating in a
10 series of dialogues called, What's Next
11 West Virginia. And a few leaders are
12 listening as evidenced by initiatives in
13 Eastern Kentucky and in Southern West
14 Virginia. Even the president's budget
15 includes significant investments in the
16 Appalachian region.

17 Together with federal policymakers,
18 states, especially West Virginia, should
19 help ensure that economic diversification
20 and resources for workers in communities
21 are an important part of their compliance
22 plans. Fortunately, there are a variety
23 of policies both within the context of
24 state compliance plans and through

1 complimentary policies enacted by state
2 legislatures that can help, including
3 market-based mechanisms and tax policies,
4 like West Virginia's Future Fund that was
5 established last year. By working
6 together, we can not only establish a
7 strong standard to protect the planet's
8 climate, but also ensure that workers in
9 communities have a fresh economic
10 opportunity as market forces continue to
11 drive a shift away from coal.

12 I do not accept this as an either/or
13 proposition. Our children and our
14 grandchildren will face the risks of a
15 vastly different climate caused by our
16 failure to act to reduce emissions today.

17 My young niece, and maybe someday her
18 children and grandchildren, will face an
19 uncertain future if we fail to invest in
20 the workers and communities that have
21 built this nation's wealth. It is much
22 harder, but it is imperative that we do
23 both.

24 Thank you.

1 SENATOR CAPITO: Thank you,
2 Dr. Richardson.

3 Our next witness is James M.
4 Van Nostrand. Did I say that correctly?

5 MR. VAN NOSTRAND: Van Nostrand,
6 Senator.

7 SENATOR CAPITO: He is Associate
8 Professor, Director of the Center for
9 Energy and Sustainable Development, West
10 Virginia University College of Law.

11 Welcome.

12 MR. VAN NOSTRAND: Thank you very
13 much, Senator Capito and Congressman
14 Jenkins. I really appreciate the
15 opportunity to speak today.

16 Before I start off, I want to share
17 your frustration with the inability to get
18 anybody from EPA to come to this state.
19 We had a conference back in February of
20 2014 focusing on the then anticipated EPA
21 111(d) Rules. Senator Manchin was our
22 keynote speaker. We tried for weeks to
23 get an EPA speaker to come to our
24 conference. We started off with Janet

1 McCabe and kind of kept working our way
2 down. And we were unsuccessful in having
3 them come to our state. So it is
4 frustrating.

5 As everyone knows, we have a big
6 basketball game coming up on Thursday
7 night in Cleveland, Ohio. I thought today
8 would be a good chance to not only talk
9 about the Wildcats and the Mountaineers on
10 the court, but let's talk about West
11 Virginia versus Kentucky. I guess I would
12 call my testimony a tale of two states;
13 why West Virginia is losing the battle for
14 our energy future.

15 In Kentucky -- I think we all saw the
16 Senate race last year where Senator
17 McConnell and Alison Grimes were fighting
18 about who hated the EPA the most. Most
19 recently, Senator McConnell encouraged
20 states to not cooperate with the EPA in
21 the implementation of the 111(d) Rules.
22 So we have that going on at one level.

23 But within the state of Kentucky,
24 there's a tremendous bipartisan effort

1 going on led by Governor Steve Beshear, a
2 Democrat, and Congressman Hal Rogers, a
3 Republican.

4 Several years ago, Governor Beshear
5 started on a policy of an all-above energy
6 strategy in the state of Kentucky. And
7 most recently, he and Congressman Hal
8 Rogers have encouraged the SOAR project
9 which is shaping our Appalachian region.
10 1700 people showed up for the SOAR
11 convention in Pikeville, Kentucky on the
12 issue of the 111(d) Rules. They were
13 basically talking about the future of
14 Kentucky, moving toward a different future
15 and having a broad bipartisan support
16 taking on these tough issues of a
17 transition.

18 On the 111(d) Rule, Kentucky was one
19 of the leading states in the country.
20 They shared a white paper with the EPA in
21 October of 2013 saying we know these rules
22 are coming down the road and this is
23 what's going to work for Kentucky. These
24 are the things that we need to make this

1 rule work for Kentucky. We are going to
2 have a disproportionate impact, but these
3 are the rules. Kentucky became a national
4 leader in terms of a state getting out in
5 front on the 111(d) Rules. We invited
6 John Lyons, the head of the Energy and
7 Environment Cabinet for Kentucky, to come
8 to our conference back in February a year
9 ago.

10 Now let's look at West Virginia. We
11 have no comprehensive energy planning in
12 this state. Our legislature just recently
13 repealed the renewal portfolio standards,
14 which would have encouraged renewal
15 energy. They are rolling back net
16 metering. And while many utilities around
17 the country were selling off their coal
18 plants for pennies on the dollar, in West
19 Virginia we're buying additional coal
20 plants and putting them into our rate base
21 and actually paying more than their fair
22 market value for them.

23 I understand Charles Patton is
24 talking about the interest of AEP and

1 diversity. Well, we're not seeing that
2 diversity in West Virginia. The AEP
3 subsidiary, Wheeling Power, just acquired
4 the Mitchell plant. The AEP subsidiary,
5 Appalachian Power, just acquired the Amos
6 plant. Mon Power acquired the Harrison
7 plant. These are all plants -- for our
8 foreseeable future, most of our
9 electricity is going to be generated by
10 coal. We're not seeing any event -- any
11 fuel diversity. We're not seeing any of
12 the effects of the shale gas revolution.

13 We're not really sharing in those
14 lower energy prices. Both utilities
15 operating in West Virginia filed for
16 double-digit rate increases last year.
17 And that's before we get to the impact of
18 these coal plants being added to our rate
19 base and the increase in compliance caused
20 under MATS and of the 111(d) Rules.

21 Our response on a legal front is, our
22 attorney general has filed a lawsuit
23 joined by 11 other states to destroy the
24 EPA rule in court. We've joined the

1 Murray Energy lawsuit. I don't think the
2 courts are going to be able to stop
3 climate change, and I don't think
4 litigation is a climate change strategy,
5 as a compliance strategy.

6 What's frustrating is it doesn't need
7 to be this way. As Jeremy Richardson just
8 mentioned, I think West Virginia has
9 tremendous potential. We are sitting on
10 top of the Marcellus shale. We are an
11 energy state. We should be winning the
12 energy war. We have more resources at our
13 disposal than does Kentucky with the
14 availability of natural gas, renewables.
15 We have virtually untapped energy
16 efficiency. We are rated number 46 in the
17 country by the American Council for Energy
18 Efficient Economy in terms of our energy
19 efficiency commitment. And we can do
20 better.

21 As my testimony mentions, I think the
22 whole issue of reducing greenhouse gas
23 emissions really cries out for a
24 legislative solution. I don't think the

1 Clean Air Act is a great fit. I have
2 concerns about 111(d), and I certainly
3 have concerns about 111(b) that cries for
4 a legislative solution. But I don't know
5 that we're going to be able to get that
6 solution. We're doing the best -- I think
7 the EPA is moving forward with the
8 statutory authority on the Clean Air Act.
9 They have the authority to do that.

10 But a legislative solution would be
11 better because there's no question West
12 Virginia is getting hit disproportionately
13 hard. But there's limitations on what an
14 agency can do to address those desperate
15 impacts. A legislative solution could
16 address that.

17 In closing -- I don't know how the
18 Mountaineers are going to do Thursday
19 night. I'm very hopeful we'll be
20 competitive. I think on the basketball
21 court we'll be competitive. I worry that
22 on the energy front, West Virginia versus
23 Kentucky, I worry that we're losing that
24 war. And we should be winning that war.

1 Thank you very much.

2 SENATOR CAPITO: Thank you very much.

3 And, boy, they did look good last night,
4 didn't they?

5 Our final witness is Charles Farmer
6 who is president of Rouster Rope, Wire and
7 Rigging, a small business here in Raleigh
8 County. Welcome, Mr. Farmer.

9 The process is basically a
10 five-minute synopsis of your testimony,
11 and then we're going to move to the
12 question portion. Welcome.

13 MR. FARMER: Thank you, Senator
14 Capito, Representative Jenkins and panel.
15 Thank you for having me here.

16 I hope I represent our state very
17 well, but especially the southern part of
18 West Virginia. Twenty years ago, I got
19 into the rigging business for the logging
20 industry. We saw them leave because of
21 regulation insurance. We are not tied
22 completely to the mining industry. But a
23 devastating amount of loss of work has
24 happened here.

1 The EPA MATS 111 regulations have an
2 effect on small businesses which you
3 generally don't see. We had over 170, 80
4 mines a year ago. Now we're down to 70,
5 80. We've lost a lot of revenue in our
6 counties for road building particularly.
7 I don't know how many of you have been
8 between here and Kentucky, in Raleigh,
9 Wyoming, McDowell, Mingo Counties and seen
10 the absolute devastation of the economies
11 and loss of business.

12 The EPA is making good headway, which
13 we support, for clean air and the
14 environment. In a regional time frame,
15 that would be good. But as they press
16 harder and harder to adapt to stricter and
17 stricter regulations, we see people
18 leaving here, and a workforce they are
19 going to be very hard pressed to replace.

20 Our good customers, such as AEP, the
21 United Mine Workers, and their workers and
22 the mines here, have lost more than what
23 we will. We've seen their plants --
24 Clinch River, Glen Lyn, Kanawha River,

1 Sporn. The regulations are pushing people
2 out of work and leaving this industry.
3 Our revenues are killing us.

4 My business is going down instead of
5 going up in this wonderful economy that we
6 have. I'm a petroleum engineer from West
7 Virginia University. I've lived all over
8 the world. I came back to West Virginia
9 to make a difference in this community and
10 to employ people in this town to try to
11 make a difference and diversify our
12 economy away from the extractive
13 industries.

14 Again, I'll go back to the southern
15 part of West Virginia. I don't know how
16 many of you travel down there. But that's
17 some of the steepest, roughest,
18 uninhabitable terrain to build businesses,
19 plants. Without removing the
20 mountaintops, there is really no place to
21 put people up out of the flood zone, not
22 even to put the businesses here.

23 The infrastructure to get there --
24 piping, water, electricity is extremely

1 expensive to build that infrastructure
2 here, which we support. The line
3 transmission work, the gas and pipelines.
4 But we continue to see interference. The
5 delays and delays and delays of the
6 projects, and the target moves and moves
7 and moves, and the time frame gets
8 shorter. Our customers do not benefit
9 from such haste to prove to the world --
10 America is showing the way.

11 We had friends come back from China
12 here in the past month in the coal
13 industry. And they can tell you in their
14 coal industry, they are running zero
15 scrubbers on their plants. And we think
16 this is an unfair advantage to the people
17 whose economies are growing and ours are
18 shrinking. It goes to all industries.

19 Now, 20 years ago, we had great hope
20 for this place. But we see our customers
21 moving down -- Caterpillar left here this
22 past year with 120 jobs in the mining
23 equipment business. Our miners have had
24 to become workers in the salt mines in

1 Louisiana, and elsewhere. There is no
2 work for them.

3 I hope that you will remember that
4 the terrain here is not very conducive to
5 building large plants and building new
6 towns that are not actually in an area of
7 danger from the environment that we
8 continue to face.

9 When we got into the mining industry,
10 there were so many tons of mines built.
11 And through market forces and speculation,
12 a lot of the mining grew. And like in the
13 oil and gas industry now, our gas industry
14 down here is going to be faced with
15 regulations with the escape of methane.
16 And I have drilled many wells.

17 When you get into productive gas well
18 drilling, it's inevitable to get the gas
19 away from the rig. It's a very dangerous
20 situation. At some point in time, we feel
21 like through these regulations, they're
22 going to drive what is now a very
23 expensive proposition -- it takes 5 to
24 \$6 million to drill one of these

1 Utica/Marcellus wells. We can only
2 imagine what the regulations are going to
3 do to the gas drilling in Southern West
4 Virginia. Our recounts are already in
5 half. We are already seeing people going
6 bankrupt and leaving the business because
7 of market forces. But regulations are
8 going to put a lot more pressure on them.

9 Again, we've seen our customers, such
10 as this panel, spend billions of dollars
11 to upgrade only to have the target moved
12 again. The compliance efforts of these
13 people have been Herculean. We applaud
14 their efforts because we know the power
15 companies are dedicated to finding a way
16 to produce energy without coal. Without
17 coal, I don't think our southern part of
18 the state can survive in any way shape,
19 form or fashion.

20 My contemporaries I work with do not
21 think the federal government has any
22 interest in the viability of this industry
23 in the Appalachian basin. We feel like
24 we're being put upon in an unfair

1 competition against the world who does not
2 adhere to what we're trying to do. We
3 feel like their efforts -- the federal
4 government efforts should be to work with
5 those people overseas to get some kind of
6 equal playing field.

7 We're not asking for subsidies. Our
8 company will diversify and continue to
9 adapt. But to adapt is becoming an
10 extremely difficult situation for Rouster
11 Wire, Rope and Rigging. If a company here
12 in town is spending \$10,000 a month on
13 energy and we get a 26 percent increase in
14 energy, you're looking at one or two more
15 employees that I could be putting to work.
16 Take all the tax -- I mean, off the dole
17 and actually be constructive citizens of
18 Southern West Virginia.

19 As we see our OEMs, our original
20 equipment manufacturers, slow down --
21 we're not talking about four, five, ten
22 jobs at Rouster Wire, Rope and Rigging.
23 We're talking about hundreds of jobs from
24 the ground to the top, to the finished

1 product, to when that machinery goes into
2 production. It's going to hurt our
3 southern part of West Virginia worse than
4 anything.

5 We do want a clean environment.
6 Being fathers and grandfathers of children
7 here, we definitely want a clean
8 environment. We need consistent,
9 long-term goals that don't crush our
10 economy here in Southern West Virginia.

11 Thank you very much.

12 SENATOR CAPITO: Thank you,
13 Mr. Farmer.

14 Thank all of you.

15 We're now going to move to the
16 question portion. I am going to start --
17 there's lots to talk about here.

18 I want to start with Mr. Patton. I
19 want to talk about the reliability issue
20 because coal is our baseload fuel in this
21 country. And if we don't have the
22 baseload, then we can't peak when it's
23 really cold or it's really hot or where
24 there's an outage or there's a flood or

1 there's something that's happened in
2 another region of the country that -- or
3 the region that is hampering our ability
4 to get power.

5 And coal certainly is that baseload.
6 It's secure. I read in your testimony
7 where you can store it right on the
8 facility. You don't have to look for it
9 to come in maybe through a disrupted
10 pipeline or something like that, or
11 whether the sun is shining or the wind is
12 blowing. It's there. Coal is there.
13 It's solid.

14 Let's go back to the polar vortex of
15 last year. I understand at AEP there
16 were -- that you were peaking at maximum
17 capacity. If that were to happen in, say,
18 two or three years from now when you've
19 taken your coal plants down, it could have
20 a real effect on the reliability of our
21 power generation. Could you speak to that
22 issue?

23 MR. PATTON: Yes. Thank you,
24 Senator.

1 So first of all, just one point of
2 clarification to comments that were made
3 previously about Appalachian Power
4 Company. And it is related to your
5 question.

6 Appalachian Power Company
7 transferring coal plants to serve its
8 customers in West Virginia. Yes, we did.
9 I'm very proud of transferring those
10 plants. Because those plants were the
11 cheapest options for our customers.

12 It's important to understand in this
13 conversation around natural gas -- and
14 natural gas is a rich, abundant resource.
15 And it is the fuel -- it is affordable
16 fuel. It is. The price and availability
17 of that fuel is indisputable.

18 The reality though is that if you
19 have a coal plant and it is a coal plant
20 that meet current EPA standards, that coal
21 plant is very competitive with natural
22 gas. Because coal on an MMBTU basis is
23 still a cheaper fuel than natural gas.

24 The difference is the capital cost

1 associated with building a new coal plant
2 with all the environmental requirements
3 versus the cost of building a new gas
4 plant.

5 So the coal plants that Appalachian
6 Power Company has transferred to serve its
7 customers in West Virginia -- or have been
8 transferred because we believe that -- to
9 your question -- that those plants are
10 both reliable and they are affordable and
11 the best option for our customers.

12 To that end, last year the polar
13 vortex, which received a lot of
14 attention -- at Appalachian Power Company,
15 we set an all-time peak. But what is not
16 known for most people is this winter it
17 did not get the attention of the polar
18 vortex, but we broke last year's record.
19 This February was actually colder than
20 last year. Both last year and this year,
21 every plant that Appalachian Power Company
22 has -- every coal plant was running -- was
23 up and operating.

24 The Glen Lyn plant, which will not be

1 here next year. The Kanawha River plant,
2 which will not be here next year. The
3 Sporn plant, which will not be here next
4 year. Cameron, which will not be here
5 next year. All of these plants were
6 running. I'm sorry. Not Cameron. But
7 all of the APCO plants were running this
8 year, and they will not be available next
9 year or in the near future until we can
10 build additional capacity.

11 The PJM, which is the governing body,
12 tells us that they're at sufficient
13 capacity. If there is sufficient
14 capacity, why would we have to run every
15 one of our units whenever we get into
16 these peak conditions?

17 SENATOR CAPITO: I think that's a
18 real concern certainly where the
19 replacement for this power generation
20 could possibly come from.

21 Just as a side comment, in your
22 statement you talk about the cost of --
23 well, you talked about it a little bit
24 here -- building a new coal-fired power

1 plant, building a new natural gas plant.
2 Well, it's not like these things can occur
3 overnight either. What's the length of
4 time -- let's say you were going to --
5 decided to build a natural gas plant in
6 the Wheeling area. How long would that
7 take - just real quick - expensive-wise
8 and -- a ten-year project?

9 MR. PATTON: No. Once you get
10 permits, I would say you could build one
11 in probably -- it's probably about a
12 three-year process.

13 SENATOR CAPITO: Once you get
14 permits?

15 MR. PATTON: Once you get permits.

16 SENATOR CAPITO: What's the time for
17 the permit?

18 MR. PATTON: Well, when I say three
19 years -- three to four years, you can get
20 permitted and build a natural gas plant.

21 SENATOR CAPITO: What is the
22 approximate cost of something like that?

23 MR. PATTON: A natural gas plant --
24 to give you a common benchmark, a thousand

1 megawatt gas plant would be about \$1.3
2 billion.

3 SENATOR CAPITO: Mr. Trisko, let's
4 talk about the EPA's legal authority that
5 sort of came through everybody's
6 testimony. You know that there's four
7 building blocks. And for those of you in
8 the audience, that's what the Clean Power
9 Plan is based on, EPA's four building
10 blocks. But building block one seems to
11 fit within the EPA's traditional authority
12 to regulate emissions at the source.

13 But is there any legal basis for EPA
14 to regulate natural gas dispatch
15 requirements? What that means is, in this
16 Clean Power Plan, they're saying -- the
17 way I understand it, the natural gas plant
18 has to dispatch at 70 percent. Is that
19 your understanding?

20 MR. TRISKO: That's what the rule
21 proposes.

22 SENATOR CAPITO: And presently
23 they're dispatching at, what, 51 percent
24 or something like that?

1 MR. TRISKO: Yes.

2 SENATOR CAPITO: So do you think
3 there is legal basis for the dispatch for
4 the Renewable Portfolio Standard, or to
5 order reductions in energy demand on
6 customers?

7 MR. TRISKO: Senator, those are all
8 very good questions. Let me start at the
9 top. Building block number one, the 6
10 percent efficiency improvement for coal
11 plants. Even the author of the study that
12 EPA relied upon for that 6 percent
13 efficiency improvement has disclaimed the
14 study for purposes of EPA's application of
15 the study findings to this rule. Six
16 percent has been roundly denounced in the
17 comments EPA has received as being
18 unachievable. The figures I hear most
19 commonly are in the order of 1 to 2
20 percent. It's realistic estimates.

21 Now, that would be an
22 inside-the-fence reduction. That is what
23 the UMWA urged EPA in a number of meetings
24 that we held with the agency prior to the

1 proposal of the rule. We said figure out
2 what you can get from existing plants
3 inside the fence. Send the engineers in,
4 boots on the ground. Consistent with what
5 EPA is required in its new source, Backed
6 Guidance, by the way. And that went
7 through an EPA stakeholder process for
8 over a year. The agency chose to go far
9 beyond the inside-the-fence approach.

10 Now, it starts with the natural gas
11 dispatch requirement. To the extent that
12 a coal-based facility has an existing gas
13 combined cycle facility located within its
14 fence line, then I would say arguably EPA
15 has authority under Section 111(d).

16 But to the extent that another
17 utility in another part of the state
18 happens to have an existing natural gas
19 combined cycle unit, then I don't see
20 111(d) as providing the authority for EPA
21 to require that redispatch requirement.

22 Now, Senator, key phrase in
23 Section 111(d) is a standard of
24 performance. Now, this is classic

1 throughout the Clean Air Act, a standard
2 of performance. I am at a loss to find
3 within the penumbras of previous EPA
4 regulation regarding existing source
5 performance standards or new source
6 performance standards requirements related
7 to increased residential energy
8 efficiency.

9 I am at a loss to find authority
10 linking 111(d) to renewable energy
11 standard requirements. There's good
12 reason for that. Because under our
13 federal system, Congress has seen fit to
14 allow the states to determine based upon
15 their own individual social, economic,
16 political characteristics the extent to
17 which they would pursue energy efficiency
18 programs or renewable energy standards.

19 As noted, West Virginia had its own
20 renewable energy standard on the books for
21 a period of time and just recently chose
22 to repeal that standard. Other states
23 similarly have moved in the direction of
24 revising their renewable energy standards.

1 Quite a number of states have chosen not
2 to adopt them. This is an effort by U.S.
3 EPA, in effect, to require those states
4 that have chosen for their own reason not
5 to pursue renewable energy standards to
6 impose them under the rubric of
7 Section 111(d).

8 I don't find the statutory authority
9 for it. And I'm hopeful that the D.C.
10 circuit will likewise be doubtful of it,
11 and ultimately the Supreme Court will
12 affirm.

13 SENATOR CAPITO: Thank you.

14 Mr. Farmer, thank you for coming.
15 Thank you for investing in West Virginia
16 as a West Virginian. I think one of the
17 most frustrating things for me is just the
18 seeming inability for the EPA to actually
19 look at what the economic impacts, you
20 know, in regions has been. I just think
21 that they have by the fact -- as we
22 shared, they haven't come and listened to
23 us. They don't know about the thousands
24 of miners that have already lost their

1 job. Certainly, in Eastern Kentucky where
2 Hal Rogers represents, they've had
3 thousands of jobs lost there. And in
4 Southern West Virginia, again, thousands
5 of jobs.

6 Could you just -- and you alluded to
7 this in your statement. But I really
8 would like to get on the record what your
9 employees -- how do they feel about
10 knowing that they're on pins and needles
11 as to whether they're going to have a job
12 when they know that policies emanating
13 from the president and the executive
14 branch are really not listening to them,
15 not seeming to even care, about what a
16 particular region of this country and how
17 devastating policies that -- as you said,
18 tight timelines, unachievable deadlines.
19 I mean, this has got to be a daily
20 conversation in your building --
21 buildings.

22 MR. FARMER: Senator, I appreciate
23 the opportunity to be here again. I again
24 apologize for being late. 30 minutes

1 before I was here, I looked like a coal
2 miner. When Hampton called me, I had to
3 rush and get a shower.

4 Our guys -- we have a great, and have
5 had a great workforce here in Southern
6 West Virginia that's provided energy and
7 timber for our war efforts. I think that
8 one common thread that runs through the
9 conversation from the aggregate companies
10 to the pipelining companies to
11 transmission distribution and power
12 generation, people are worried about the
13 world situation here in this little part
14 of Southern West Virginia. How would we
15 prepare ourselves for a war to generate
16 power and make steel, very energy
17 consumptive, extractive base industries?
18 We're the people that pick this stuff up.
19 We're the people that get this off --
20 materials on the cranes to pick these
21 things up, to tie them down, to move them
22 across our roads.

23 Our workers, Senator, are extremely
24 worried of my ability to continue to

1 provide jobs here in West Virginia which
2 continue to shrink and contract. I don't
3 think the world knows that much about our
4 area down here and how rough it is. It's
5 not -- 80 percent of the land south of
6 Charleston is owned by large land-holding
7 companies and coal companies and trusts.
8 Eighty percent of the land north of
9 Charleston is more held by private people.

10 There's no opportunity for my workers
11 to turn and go across town and get a job
12 for 13, \$14 an hour. Our average salaries
13 are 20, \$25 an hour. Our bosses with no
14 education make 65-, \$70,000 a year. These
15 jobs are not here. The regulations that
16 we see -- we're intimately associated with
17 the power generation, transmission,
18 distribution business.

19 If I recall right, Mr. Patton, when
20 you-all built the 765 KV line from Oceana
21 to Jackson's Farm, Virginia -- from the
22 time of conception to the time of first
23 caisson was drilled, it was like ten
24 years. I don't know if that's a fact or

1 not.

2 MR. PATTON: More like 14.

3 MR. FARMER: Fourteen years from time
4 of conception through the public comment
5 period to constructing the first yard of
6 gravel. By the way, that was our first
7 large rigging job for my company. It gave
8 me two more employees. And we thank you.
9 But now, not only them, but we're worried
10 about our gas line, which is what we're
11 focused on this year.

12 We don't think that the regulations
13 and -- the permitting and the regulations
14 that are going to be forced upon them
15 through the EPA are going to allow us to
16 continue -- possibly not even be working
17 here in five years. Thank you, Senator.

18 SENATOR CAPITO: Thank you.
19 Congressman Jenkins.

20 CONGRESSMAN JENKINS: Thank you,
21 Senator.

22 A couple of questions. First,
23 Dr. Richardson, good morning and welcome.
24 From your comments, I think I heard you

1 say -- and I just want to make sure. You
2 think what the EPA has proposed is quote,
3 not bold enough? You think the EPA should
4 actually be going further on their carbon
5 and their greenhouse gas emission
6 standards?

7 MR. RICHARDSON: That's right.

8 Thanks for the question.

9 If you look at the science of climate
10 change and you look at the magnitude of
11 the problem, it really is urgent to bring
12 down our carbon emissions more so than
13 what the proposed regulation would
14 accomplish.

15 The analysis that we did at UCS shows
16 that in terms of the renewables building
17 block, that the agency actually
18 underestimated the potential nationally
19 for renewables to play a part in what they
20 proposed.

21 CONGRESSMAN JENKINS: The progressive
22 budget has for the last several years
23 contained a provision for a carbon tax.
24 And in the language in the progressive

1 budget, it specifically says through the
2 imposition of a carbon tax, it will have
3 the ability to impact the weather and
4 address significant storm potential.

5 Do you agree, one, with the belief
6 that a carbon tax is a good mechanism by
7 which to influence change, vis-a-vis,
8 electric power generation through the use
9 of coal? Do you support a carbon tax?

10 MR. RICHARDSON: I would say that in
11 general UCS's agnostic about the
12 particular policy mechanism. But I think
13 that we would absolutely agree that a
14 price on carbon is essential.

15 I think that one of the most
16 frustrating things for me is to hear
17 people talk about how cheap coal is.
18 Because if you look at the externalities
19 from the extraction of coal, the
20 transportation of coal, the burning of
21 coal, the pollution that it releases when
22 it's burned, the ash that's left over
23 after it's burned -- it has a huge impact
24 on not only on the environment, but public

1 health. And if you were to add up all of
2 those extra costs that are not included in
3 the price that you pay for your
4 electricity, it would double or triple the
5 price of coal-fired electricity.

6 So I think that the point of having a
7 price on carbon would absolutely send a
8 signal that, look, it shouldn't be free to
9 dump this substance into the atmosphere.

10 CONGRESSMAN JENKINS: You raised
11 during your comments, Williamson, West
12 Virginia and held it out as a community
13 leader in addressing health issues. Just
14 in the last couple of weeks Williamson
15 Hospital announced that they are going to
16 stop delivering babies. No OB services in
17 Williamson, West Virginia.

18 How do you look at a resident in
19 Mingo County and an expectant mother who
20 historically has gone to the local
21 hospital, readily accessible, and face now
22 the impact of not being able to have a
23 baby delivered in their own home
24 community?

1 MR. RICHARDSON: I think that if
2 you -- again, I'm from the northern part
3 of West Virginia. I think that if you
4 look at Southern West Virginia as a whole,
5 there's a whole series of issues that come
6 into play when we talk about the economy.

7 The subject of this hearing is just
8 one of those things. Absolutely, there is
9 an issue with the availability of health
10 services. And healthcare in Southern West
11 Virginia is a huge problem.

12 CONGRESSMAN JENKINS: As you tried to
13 hold out Williamson as a leader in
14 healthcare, transition or transformation,
15 I'm just trying to provide a little
16 reality check that this is a community and
17 a people that are really struggling.

18 Mr. Van Nostrand, again, welcome to
19 you.

20 MR. VAN NOSTRAND: Thank you.

21 CONGRESSMAN JENKINS: You mentioned
22 in your comments twice bipartisan in
23 comparing Kentucky to West Virginia. I
24 think you did it in a context of

1 promoting -- look what they're doing in
2 Kentucky, bipartisan, bipartisan, twice.

3 We've got a Democratic governor in
4 West Virginia. And overwhelmingly within
5 the West Virginia legislature, led by
6 Republicans. Both Republicans and
7 Democrats led the charge, again, signed by
8 a Democratic governor for the repeal of
9 the renewable energy portfolio. Wouldn't
10 you acknowledge that the issues relating
11 to our advocacy has been a bipartisan
12 effort in West Virginia?

13 MR. VAN NOSTRAND: Well, certainly we
14 have a split in parties and control in
15 West Virginia. I think the point I was
16 making about Kentucky was the bipartisan
17 effort to start the conversations, to have
18 the issue. You look at the shaping our
19 Appalachian region process - it's going to
20 be another conference in a couple months
21 from now - and you've got this -- a
22 Democratic governor and Republican
23 congressman who are starting those
24 conversations in Kentucky and talking

1 about the future.

2 I think it's been effective. I think
3 they're much further down the road of a
4 future. And they don't have the benefit
5 of Marcellus shale. They don't have the
6 benefit of a great energy resource. We
7 should be a better energy state than
8 Kentucky.

9 So, yeah, I understand -- I
10 acknowledge that we have a Democratic
11 governor and legislative control by the
12 House. But we have -- I was talking about
13 the federal and state level. Just the
14 fact that you can have two U.S. Senators
15 battling for that position, Mitch
16 McConnell and Alison Grimes. But the --
17 while that's going on -- in a Senate race,
18 you've got this action going on between a
19 Democratic governor and Republican
20 congressman to start those conversations.

21 That's my point. We really need to
22 start those conversations in West
23 Virginia.

24 CONGRESSMAN JENKINS: Are you

1 thinking those conversations are not
2 already being had about the future of West
3 Virginia? As a former member of the
4 legislature, we talked about Marcellus
5 shale. West Virginia was a leader in
6 establishing legislative policies relating
7 to how we're going to, in an appropriate
8 way, seize that energy opportunity. We
9 are talking about the south and issues
10 relating to the future of Southern West
11 Virginia. So when you say I think West
12 Virginia should start -- I think you're
13 not giving credit for the kinds of efforts
14 and discussions that are already being
15 had.

16 Let me ask you -- you also pointed a
17 finger at West Virginia relating to the
18 suit against the EPA. You and I are both
19 attorneys by education. Never ask a
20 question you don't know the answer to. Is
21 Kentucky one of the states that is suing
22 the EPA?

23 MR. VAN NOSTRAND: Yes, they are.

24 CONGRESSMAN JENKINS: I thought they

1 were.

2 MR. VAN NOSTRAND: I don't deny
3 that's going on at one level. The
4 question is, while you have these
5 positions being taken at one level, is
6 there hard work going on behind the scenes
7 to figure out how we're going to make this
8 work for our state? That's happening.

9 CONGRESSMAN JENKINS: Chairman
10 Rogers, the chair of the committee I serve
11 on, appropriations, is passionate,
12 passionate, and you give him credit for
13 SOAR. I too give him credit. But he is
14 as articulate and as passionate and as
15 bulldogish as they come in fighting the
16 EPA in standing up for coal.

17 You can walk and chew gum at the same
18 time. You can talk about the future, but
19 you can also be a passionate advocate for
20 coal.

21 So I'm having a difficult time when
22 you compare Kentucky and West Virginia.
23 Kentucky is suing the EPA. Kentucky is
24 representative and Congress is fighting

1 the EPA. Kentucky and West Virginia in a
2 bipartisan effort are standing up for
3 coal.

4 So while you can point to a program
5 or project, I think you can -- a fair
6 analysis, you can find that West Virginia
7 too is looking to the future.

8 MR. VAN NOSTRAND: I guess I would
9 still go back to Governor Beshear a few
10 years ago talking about an
11 all-of-the-above energy strategy which
12 really looked at, not just coal, but also
13 taking advantage of that state's renewable
14 resources -- that state's energy
15 efficiency resources, that kind of
16 leadership going on. And we have not
17 had -- I mean, the steps our legislature
18 is taking in the last couple of years --
19 the last year, we're moving in an entirely
20 different direction.

21 CONGRESSMAN JENKINS: In a bipartisan
22 effort?

23 MR. VAN NOSTRAND: Not this year. We
24 have a Democratic --

1 CONGRESSMAN JENKINS: Do you know
2 what the vote in the House and Senate --

3 MR. VAN NOSTRAND: I testified on
4 the --

5 CONGRESSMAN JENKINS: Was that not
6 bipartisan?

7 MR. VAN NOSTRAND: Yeah, it was.

8 CONGRESSMAN JENKINS: Did the
9 governor sign the repeal of the Renewable
10 Portfolio Standard?

11 MR. VAN NOSTRAND: Yes, he did.

12 CONGRESSMAN JENKINS: Is he a
13 Democrat?

14 MR. VAN NOSTRAND: Yes, he did. He
15 also signed the bill to wind down that
16 metering.

17 CONGRESSMAN JENKINS: Thank you.

18 SENATOR CAPITO: Mr. Trisko, quickly,
19 on the MATS Rule that is the rule that was
20 put into effect in 2008 -- is that --

21 MR. TRISKO: 2011, Senator.

22 SENATOR CAPITO: 2011. Excuse me.

23 How has the implementation of the
24 MATS Rule impacted the UMW? And do you

1 expect similar impacts from this Clean
2 Power Plan to affect the United Miner
3 Workers and their workforce?

4 MR. TRISKO: Thank you, Senator.

5 When the MATS Rule was initially
6 proposed, the UMWA estimated potential
7 plant closures amounting to 56,000
8 megawatts of capacity. Largely, the
9 smaller and older generating plants, such
10 as Kanawha River, Sporn, they would not be
11 able to afford the capital expenditures
12 for the investment and compliance with
13 MATS. At the time, EPA indicated that
14 their estimate of retirements due to the
15 MATS Rule was 4.7 gigawatts. So we were
16 pretty much in order a magnitude apart in
17 our estimates.

18 A number of years went by. Other
19 studies were done by Wall Street, by other
20 consulting firms. And the consensus
21 estimate of closures as a result of the
22 MATS Rule -- and this will continue
23 through about the year 2017. There are
24 one- and two-year extensions available

1 under that rule -- are on the order of 50
2 gigawatts of capacity.

3 You will have another 20 or so
4 gigawatts that will retire for any
5 reason -- a number of reasons; lower
6 natural gas prices, reduced industrial
7 demands, so on and so forth. Those two
8 numbers, 50 gigawatts for MATS and another
9 20 make up the 70-plus gigawatts that EPA
10 indicates will retire apart from the Clean
11 Power Plan.

12 Now, Senator, if I might, there's
13 been a missing element within this
14 discussion as it relates to reliability
15 and the impact on coal. We are not
16 appropriately considering at this point
17 the potential impacts of EPA's revision of
18 the eight-hour ozone standard. The
19 comment period on that rule closed last
20 week. EPA has proposed a range of 65 to
21 70 ppb. The current stand is 75 ppb.
22 They're also put forward an alternative
23 standard of 60 ppb.

24 EPA's regulatory impact analysis

1 indicates that at the 65 ppb proposed
2 standard, 51 gigawatts of coal capacity -
3 which are identified in the docket in this
4 rule making - are subject in EPA's view to
5 potential retrofit of selective catalytic
6 reduction technology, SCR. It's like the
7 catalytic converter on your car, except
8 it's the size of a house and it costs a
9 couple hundred million dollars.

10 EPA likewise has identified that many
11 of these units subject to SCR requirements
12 are older and smaller units. We believe
13 it more likely that those plants would
14 retire rather than invest in SCR capacity.
15 So, in effect, we are looking at yet
16 another 50 gigawatts or 50,000 megawatts
17 of potential capacity shutdowns between
18 now and roughly the year of 2023. So that
19 would bring the total -- taking it from
20 122 gigawatt reduction from EPA's
21 regulatory impact analysis, it would take
22 it above 150, in the direction of 170
23 gigawatts. Our total coal fleet is just
24 over 300 gigawatts.

1 Frankly, Senator, I do not know how
2 this country keeps the light on with the
3 loss of 150 or more gigawatts of coal
4 capacity. That represents more than
5 20 percent of our total electric
6 generation when you consider the
7 generating capacity of those facilities.

8 SENATOR CAPITO: Thank you. I wanted
9 to talk a little bit about the letter that
10 Senator McConnell wrote. I think,
11 Professor, you might have talked about it.
12 My reading of the letter basically says
13 every state has to have a state
14 implementation plan. I asked
15 Administrator McCabe if the states do not
16 have a state implementation plan, what
17 happens. And she said the EPA will make
18 the implementation plan. Which sent sort
19 of the wrong kind of chills down my spine.

20 But in any event, I think McConnell's
21 point is, if you're going to impose
22 certain standards on every state and the
23 state has to come up with the state
24 implementation plan, the state makes the

1 difficult decision -- the state says we're
2 going to close this many power plants,
3 your workforce is going to be cut, you
4 know, and the difficult, hard -- at the
5 community level, employment level, price
6 and cost of electricity level are made at
7 the state.

8 I think what McConnell is saying is
9 if the EPA wants to go in this direction
10 and they're federally allowed to do it,
11 then they're the ones that are going to
12 have to be the ones that make the tough
13 decisions. The EPA is going to be the
14 ones that's going to tell West Virginia
15 how we're going to meet a standard that we
16 basically don't think we're going to meet.

17 Which leads me to a whole other
18 issue, which is the regional issue. You
19 mentioned it, I think, in your statement.
20 The plan allows for you to be able to go
21 to different regions so that you could
22 maybe capture certain statistically
23 reductions from your regions. We've been
24 discussing our region. We're 95 percent

1 reliable on coal. We export our coal. We
2 export our electricity. Who is going to
3 want us in their region?

4 I mean, our numbers are not going to
5 improve anybody's numbers. So we're going
6 to be in an island here. I'll quote
7 Mr. Richardson when he says, It must be
8 recognized that job impacts will be
9 unevenly disbursed. Some regions and
10 states will be winners - I appreciate your
11 frankness here - and others will
12 experience economic consequences with a
13 shift away from coal.

14 I understand basically there's
15 winners and there's losers. And we are in
16 a really difficult position here in our
17 state.

18 So I think that's why McConnell --
19 and if you would like to respond to the
20 McConnell letter, Professor, I want to
21 give you that opportunity since I brought
22 it up and that was part of your statement.

23 MR. VAN NOSTRAND: I understand the
24 position the Senator is taking. My point

1 is, I think -- those are tough decisions.
2 But I think the states know better. I
3 think our goal -- we had our conference
4 back in February a year ago. Our goal
5 is -- what flexibility is EPA going to
6 provide us? Because our goal is to try to
7 figure out how to comply with this rule in
8 the manner that has the least disruption
9 on the economy. What is our lowest cost
10 compliance path? And I think the states
11 know that better than EPA. So I think the
12 states ought to try to work with the EPA,
13 first, to shape this rule.

14 In response to what Mr. Trisko said,
15 this is a proposed rule. The final rule
16 is going to come out in December. It
17 could look entirely different in terms
18 of -- and there's nothing that's required
19 by these building blocks. The building
20 blocks were used to come to the best
21 emission reduction number, the 20 percent
22 number for West Virginia. There's no
23 requirement. The building blocks were a
24 tool used by EPA.

1 The final rule is going to come out
2 this summer. I think the states --
3 because we're in a better position to know
4 what's going to work, we ought to be
5 taking advantage and try to work with EPA
6 and -- because a federal plan is going --
7 they don't know the state as well.
8 Chances are the compliance costs are going
9 to be higher, so our utility rates are
10 going to be higher than they need to be.

11 MR. RICHARDSON: If I could just add.
12 One of the things I was trying to
13 emphasize with my testimony was that it is
14 absolutely critical that we work to
15 diversify our economy here. It just
16 doesn't make sense to have all of our eggs
17 in one basket.

18 I can tell you as well as anybody in
19 this room how proud I am of my heritage,
20 my family's heritage mining coal. Okay.
21 But it just doesn't make sense to have our
22 entire economy based on one thing that is
23 subject to these boom-and-bust cycles.

24 Think of it in terms of a risk

1 framework, right? So you don't want to
2 risk things moving forward and changing
3 that you don't have control over, whether
4 it's who is sitting in the White House or
5 whether it's how much coal China decides
6 to burn. They're working on burning less
7 coal over the next decade.

8 So there's a lot of issues here that
9 we don't have control over in Southern
10 West Virginia. So what I'm trying to say
11 is, why can't we build the solar panels?
12 Why can't we build the components of the
13 wind turbines going up? We can do that
14 here in West Virginia. But we have to
15 decide we're going to invest in that and
16 in those different sectors of the economy.

17 SENATOR CAPITO: I appreciate that.

18 Let's go to CCS really quickly,
19 carbon capture and sequestration. The EPA
20 uses that as sort of a - what do I want to
21 say - blunting of the effect of the
22 regulations. Well, if we move forward on
23 CCS -- and I certainly have been a
24 broad -- and will continue to be a big

1 supporter of the research and development
2 of the CCS. Because I think for all the
3 reasons we've talked about, coal still is
4 going to have a role. Maybe we're
5 disputing the largeness of the role. We
6 think it still needs to have that good
7 baseline, solid role that represents the
8 fuel that it is.

9 The EPA uses the Kemper plant in
10 Mississippi - and you mentioned that in
11 your statements - as the gold standard for
12 CCS. Well, I just saw the president of --
13 I think it's Southern Company owns that
14 plant, over \$2 billion cost overrun. They
15 still don't have their sequestration
16 protocol in effect. There are some -- I
17 think some great research is going on in
18 terms of enhanced oil recovery and other
19 things to use once you capture the carbon.

20 But I know that since I had the
21 Mountaineer plant in Mason County for many
22 years, when I represented Mason County,
23 they were doing a project on that plant on
24 CCS with -- I think it was Olstrum (sic)

1 and the Department of Energy. They had to
2 pull the plug on it. Give us the top two
3 reasons why, please, Mr. Patton.

4 MR. PATTON: Well, it was simply a
5 pilot project. And when we looked at
6 scaling it up, the cost of it was just
7 prohibitive at that time. As you pointed
8 out, the Kemper station in Mississippi is
9 somewhere north of \$7,000 a kw. So if you
10 were building a thousand megawatt plant,
11 it would be 7 billion -- over \$7 billion
12 plant. And a new combined cycle gas unit,
13 as I said earlier, is 1.3 billion. So the
14 technology --

15 SENATOR CAPITO: It's just not
16 economically feasible?

17 MR. PATTON: It's not economically
18 feasible.

19 SENATOR CAPITO: Not to say it never
20 will be?

21 MR. PATTON: Right. And we should
22 continue to invest in technology to ensure
23 a long and bright future for coal.

24 But one thing important to note here

1 is that -- we keep talking about -- you go
2 from coal to renewables to solar to energy
3 efficiency. And all of those things are
4 great. I believe that they should be a
5 significant part of a utility portfolio.
6 And Appalachian Power Company and AEP is
7 moving -- as I pointed out in my
8 testimony, if you look at our overall coal
9 consumption, it has dropped. But there's
10 a cost -- not only to those technologies,
11 which are more expensive. There's also a
12 cost of abandoning operational facilities
13 that serve customers.

14 So to willy-nilly just say we're
15 going to stop using these coal plants and
16 we're going to go and invest in a bunch of
17 windmills and solar panels and have our
18 customers pay for the coal plants that we
19 abandon, and to pay for the solar and the
20 windmills is just not -- it's crazy. It's
21 not what you're going to do.

22 The other thing is that renewables --
23 again, they're an important part of the
24 portfolio. But the wind doesn't blow all

1 the time, and the sun doesn't shine all
2 the time. And the bottom line is, you
3 need some type of fossil based or nuclear
4 power to support solar and wind. You have
5 to have those as backups.

6 As we saw during the polar vortex,
7 the wind didn't quite blow the way it was
8 forecasted to. When I was president of
9 the Texas company, there were a couple of
10 times we came very close to outages in
11 similar situations. So it's just
12 important to keep that in mind. It's not
13 a binary decision.

14 SENATOR CAPITO: Thank you.
15 Congressman?

16 CONGRESSMAN JENKINS: Mr. Patton,
17 let's stick with you. Let's try just for
18 a second to -- where the rubber meets the
19 road. You've alluded to it in the last
20 moment of your comments; price and
21 availability.

22 Number one, once you convert a power
23 plant away from coal, do you ever convert
24 it back?

1 MR. PATTON: You could under the
2 right economic conditions. But you would
3 not today convert it back. Because all
4 you do with a plant that you convert is
5 you convert the burners to gas-based
6 burners as opposed to burning coal.

7 CONGRESSMAN JENKINS: In your
8 decision-making process, you've listed out
9 several coal-fired power plants that are
10 being taken offline, being mothballed.
11 There are plants that are being converted.
12 Is a significant -- not total. Is a
13 significant contributing factor to those
14 business decisions that you were making
15 the policies, the proposals, the actions
16 from a regulatory standpoint from this
17 administration and this EPA?

18 MR. PATTON: Absolutely. The Kanawha
19 River plant runs fine. It's just -- it
20 doesn't meet the EPA requirements.

21 CONGRESSMAN JENKINS: Does it meet
22 the EPA requirements as of today? Or meet
23 the EPA requirements under a set of
24 proposed rules, I know in multiple areas,

1 looking forward?

2 MR. PATTON: No. The Kanawha River
3 plant falls in the group of plants that
4 Mr. Trisko pointed out. It's one of those
5 older smaller plants, which putting a
6 scrubber on that unit does not make
7 economic sense. It does not meet existing
8 MATS requirements.

9 CONGRESSMAN JENKINS: So this is
10 death by a thousand cuts. We already have
11 rules and regulations that have been put
12 in place in recent years that are causing
13 power plants that are already operational,
14 working fine, just don't meet -- and you
15 are forced as a result to take those
16 offline?

17 MR. PATTON: That is correct.

18 CONGRESSMAN JENKINS: With regard to
19 the issue -- and you referenced it in your
20 comments earlier. I am very concerned,
21 just as the Senator is, about the cost of
22 energy on fixed income -- predominantly
23 seniors as a percentage of their household
24 budget. You referenced over the last few

1 years as a result of the new expenditures
2 you've been required to make or the
3 changes. Share with me, again, those
4 numbers in terms of what it -- what the
5 price impact for a person's electric bill.

6 MR. PATTON: With the \$2.2 billion
7 investment that we made at John Amos and
8 Mountaineer plant -- we spent
9 approximately \$2.2 billion to comply with
10 the MATS and also with the Cross-State Air
11 Pollution Rules.

12 CONGRESSMAN JENKINS: Let me make
13 sure that I understand. So you have
14 regulations that require you to make
15 investments, 2.2 billion. You are a
16 regulated utility. You can't charge one
17 penny more than what the Public Service
18 Commission in West Virginia says you can
19 pay. So when you make that \$2.2 billion
20 investment, do you then go to the PSC and
21 say would you all -- here is a rate
22 increase to cover these costs, and the PSC
23 then says, yes, you're going to be granted
24 authority to raise your rates?

1 MR. PATTON: Yes.

2 CONGRESSMAN JENKINS: Are the people
3 paying for that \$2.2 billion of investment
4 that you've already made in their utility
5 bills?

6 MR. PATTON: Yes, they do.

7 CONGRESSMAN JENKINS: And those are
8 for the regulations already. Have you
9 estimated to any extent possible if the
10 proposed rules would be implemented -- and
11 we've got testimony here that says they
12 don't think the proposed rules go far
13 enough.

14 If these proposed rules as is get
15 implemented, do you have a cost estimate
16 that one of my constituents from Southern
17 West Virginia would have to pay on an
18 average utility bill?

19 MR. PATTON: The numbers are broad
20 throughout the nation. Here in West
21 Virginia, we would be looking at -- just
22 solely based on the -- on the proposed
23 rules, we would be looking at an
24 additional 25 percent. That's not -- that

1 does not include things like the
2 investment in transmission that's going on
3 right now.

4 CONGRESSMAN JENKINS: When you say --
5 are you saying that 25 percent may be the
6 floor that it could be in -- that the
7 actual number when other factors are
8 considered, the percentage increase might
9 be more than that? I wasn't sure if I
10 understood your last comment there.

11 MR. PATTON: No. I can't -- in fact,
12 I believe I misspoke. I had to think
13 about the number. In fact, it's not
14 25 percent. It's actually -- I think the
15 forecast for West Virginia is actually
16 15 percent, is what it is for West
17 Virginia.

18 Whether or not that is precise or it
19 could be more, I don't know. I can just
20 base it on the calculations based on the
21 current proposal.

22 CONGRESSMAN JENKINS: Finally -- I
23 heard it from Gina McCarthy. I hear it
24 every time the issues of these rules get

1 discussed. These are proposed rules.
2 These are proposed rules. It's almost
3 kind of a remain calm, don't worry about
4 it. We're going to have to wait to see
5 what the final -- I can't imagine an
6 administrative approach that is so
7 calculating that would say, let's do
8 something really strong, get everybody
9 worked up in a proposed, and then we'll
10 come in and back off and everybody will
11 say, look, we dodged a more aggressive
12 bullet. I can't imagine -- shame on this
13 administration if that was their approach.
14 The fact from a -- in your world, do
15 proposed rules matter?

16 MR. PATTON: Absolutely. Because
17 they drive costs.

18 CONGRESSMAN JENKINS: You're making
19 decisions, are you not, literally every
20 day, week and month about the future? You
21 don't plan a week out. Don't you plan
22 years out?

23 MR. PATTON: Absolutely. Power
24 plants typically have a life of 30 years.

1 Therefore, you're making 30-year
2 decisions. When you've made major capital
3 investments, like scrubbers, you're
4 typically looking at an additional 20
5 years associated with those types of
6 investments.

7 CONGRESSMAN JENKINS: So are you
8 making decisions as a company with an eye
9 towards what is being proposed in this
10 rule?

11 MR. PATTON: Oh, absolutely.

12 CONGRESSMAN JENKINS: Looking ahead?

13 MR. PATTON: Absolutely.

14 CONGRESSMAN JENKINS: Proposed rules
15 have consequences?

16 MR. PATTON: They have consequences.
17 In that I would suggest to you that much
18 of the industry is hamstrung on really
19 what it's going to do with some of its
20 generation right now because there's so
21 much uncertainty around what these rules
22 will ultimately be.

23 CONGRESSMAN JENKINS: Senator, if I
24 could ask maybe one more to Mr. Trisko.

1 Thank you for your leadership and your
2 effort.

3 The comment was made earlier by
4 Mr. Richardson, special considerations for
5 families is needed. Let me -- I didn't
6 delve into kind of what he meant by that.
7 I think we kind of -- probably can believe
8 what he's suggesting.

9 From your perspective, from a
10 representative of the UMWA, what sort of,
11 quote, special considerations, do you
12 think are necessary to help the
13 hard-working coal miners of West Virginia
14 get through this storm that they're faced
15 with?

16 MR. TRISKO: Congressman, that's a
17 wonderful question. The answer is that we
18 need policies that encourage the continued
19 utilization of our nation's greatest
20 fossil resource. You know that the coal
21 reserves in the United States have greater
22 energy content than all of the oil in
23 Saudi Arabia. We do not have policies
24 that enable us to continue to utilize

1 that. Rather than an all-of-the-above
2 energy strategy, we appear to be headed
3 toward a natural-gas-only strategy. That
4 is an all eggs in one basket gamble.

5 When we see the play out of the
6 reduction of capital expenditures in
7 drilling that is ongoing within the oil
8 and gas sector, when we see the
9 development of LNG export terminals, watch
10 out for the price of natural gas and what
11 your consumers will pay.

12 As for workers, unfortunately,
13 because our members tend to be among the
14 highest wage and highest benefit of
15 workers in the rural areas of Appalachia,
16 the loss of one of our jobs is equivalent
17 to the loss of more than three jobs
18 elsewhere in the economy. Those jobs are
19 not made up in alternative sectors because
20 the alternative sectors do not exist.

21 When you look at the impact in, for
22 example, a school district of the closure
23 of a power plant which is a major
24 contributor to the tax base of the region,

1 and the closure of the associated coal
2 mines, you find a cliff. And the cliff is
3 where the school district once had funds
4 available to support its students. Those
5 funds through its tax base are reduced by
6 half or more.

7 I was out in Colorado a few months
8 ago talking to 500 folks in a high school
9 gymnasium where they were addressing the
10 prospect of a loss of a nearby power plant
11 and coal mine. The president of the
12 community college, a gentleman in his 70s,
13 came up. He was one of the last to speak.
14 He said ladies and gentlemen, let me tell
15 you what it means to this community if we
16 lose the Craig Power Plant and the Twenty
17 Mile Coal Mine. I run these numbers every
18 day. I live with these numbers. If we
19 don't have that power plant -- in fact, if
20 we lose just one unit at that power plant,
21 I cannot guarantee you that our community
22 college will be able to remain in business
23 and provide one half of the course
24 offerings and faculty that we now have.

1 This gentleman recognized clearly
2 that the loss of those contributions to
3 the local tax base, to the community
4 college would not be replaced in rural
5 Colorado. And nor will they be replaced
6 in Southern West Virginia.

7 Frankly, it's simply happy talk to
8 suggest that there are solutions at the
9 state or the federal level. We've been at
10 this since the great society and the
11 Johnson administration and the Appalachian
12 Regional Commission. The funds are not
13 there in sufficient quantity to make up
14 for the kinds of losses that we in the
15 UMWA, the IBEW, the boilermakers and
16 others are beginning to experience. I
17 apologize for the length of the question,
18 but my blood pressure increased.

19 CONGRESSMAN JENKINS: I like it when
20 I touch a nerve.

21 Let me see if I can touch one more
22 nerve. The administration and their
23 budget is throwing out a big figure, a
24 billion dollars, to invest in impacted

1 communities, West Virginia and other parts
2 of the country because of this agenda.

3 I'm still confused a little bit
4 because my curiosity is -- this is --
5 where are they taking this money from to
6 make that? On the one hand, I hear maybe
7 that money is contemplated as a result of
8 a tax on coal. Isn't that incredible?
9 We're going to tax coal more and turn
10 right around and say, isn't this great,
11 we're going to give money back to
12 communities, but we're going to try to
13 kill coal through higher taxes in the
14 first place. Or they want to take it from
15 the abandoned mine fund.

16 Do you know under the president's
17 proposed investment where he is suggesting
18 that money come from? And do you have an
19 opinion as to whether this is a good
20 investment considering the source of the
21 funding from which it is being taken?

22 MR. TRISKO: Congressman, I'm not an
23 expert on the administration's budget.
24 There have been proposals to increase

1 severance taxes on western coal and
2 transfer those increased severance taxes
3 east as a compensation mechanism. I
4 suggest that you confer with your
5 colleagues west of the Mississippi River
6 as to their views on that proposal.

7 But a billion dollars, put that in
8 the context of the numbers cited in my
9 testimony, the contribution of West
10 Virginia coal, just the West Virginia
11 economy, to your gross state output, it's
12 about \$15 billion a year. And we're
13 talking about a billion dollars applied to
14 coal generally. It's a drop in the
15 bucket.

16 CONGRESSMAN JENKINS: It's a billion
17 dollars nationally.

18 MR. TRISKO: It's really a drop in
19 the bucket. Congressman, our investment
20 in research and development technology
21 that would allow us to successfully deploy
22 carbon capture and storage technologies is
23 a far better place for those investments.
24 It's got to be a lot more than a billion

1 dollars.

2 A few years ago, we were looking at
3 \$150 billion in potential funds available
4 for commercial CCS applications. Now,
5 that did not come to pass for one reason
6 or another. There are a number of bills
7 in the Senate and in the House seeking to
8 increase funds available for CCS.

9 If you want to develop technology
10 that will enable coal to be burned cleanly
11 in a carbon-constrained world, CCS or CCUS
12 is the way to go. But we must get to the
13 lower cost second and third generation
14 technologies. The first generation
15 technologies that AEP applied at the
16 Mountaineer plant proved themselves to be
17 unduly expensive. And that's why they
18 couldn't proceed to commercial deployment.

19 We have to have sufficient resources
20 available initially at the U.S. Department
21 of Energy. And I'm talking far more than
22 what was provided in AARA in order to
23 enable those second and third generation
24 technologies to be deployed.

1 When we have those technologies, then
2 coal will be able to compete effectively
3 against natural gas on a CO2 basis.
4 That's the direction that we need to be
5 headed.

6 MR. RICHARDSON: If I could just add
7 a clarification. The proposal that you
8 were just mentioning was not an
9 administration proposal. That was a
10 Center for American Progress proposal in a
11 report that they just released a few
12 minutes ago that talked about fairness
13 among federal coal mine leasing royalties.
14 So that was not an administration thing.

15 The thing that you're thinking of,
16 the billion dollars was, in fact, from a
17 proposal to shift some of the money
18 from -- its existing money from the
19 abandoned mine lands fund that has not
20 been appropriated and actually spend it on
21 communities here. It was a billion
22 dollars over five years. It would require
23 Congress to actually change how -- the
24 formula for how those funds are related.

1 I'd like to add one other thing,
2 which is that -- it's going to be
3 difficult to say this. But the truth of
4 the matter is that a lot of the coal
5 that -- the resources that we have here in
6 West Virginia, here in Wyoming, around the
7 world, have to remain in the ground.
8 Okay? If you -- there are recent studies
9 out there that suggest that 92 percent of
10 our current coal reserves must remain in
11 the ground to give us any hope of avoiding
12 the worst consequences of climate change.

13 And what I'm here to tell you today
14 is that is a clear and present danger.
15 Not only to this country, but to countries
16 around the world. We're going to figure
17 out a way to solve it one way or another.
18 My deepest fear is that we're not going to
19 solve this problem here in Southern West
20 Virginia at the same time.

21 I'm not making any -- I'm not trying
22 to be pollyanna about it, that this is
23 going to be easy or whatever. It's going
24 to be very difficult. But we've got to

1 figure it out.

2 SENATOR CAPITO: I think,
3 Dr. Richardson, in your statement you were
4 very honest about that. I mean, I
5 appreciate that. As you said, you have
6 family from West Virginia, good roots in
7 West Virginia.

8 But I'm glad that Mr. Trisko talked
9 about some of the other impacts. We've
10 talked about job impacts and impacts on
11 the cost of your electric bills monthly.
12 But there is another impact. I know we
13 have at least one county commissioner - we
14 did earlier - in the room.

15 There is an impact to every single
16 county budget. It's schools, yes. It's
17 roads. It's a whole lot of other things.
18 I can imagine, Mr. Farmer, when you pay
19 your local taxes and as your productivity
20 goes down, it's not just the coal mine,
21 it's all the other businesses in and
22 around. So it has a much greater effect
23 to the whole community rather than those
24 directly working in that business.

1 Do you have any further questions?

2 CONGRESSMAN JENKINS: I don't. Thank
3 you.

4 SENATOR CAPITO: I'm going to give
5 the professor here one shot at telling me
6 why you think that the direction that the
7 EPA has gone -- we heard Mr. Trisko's
8 opinion on the legality, the legal
9 authority. And you did mention in your
10 statement that the preferable way is to
11 legislate as opposed to regulate, which is
12 what we're seeing, or executive opinions.

13 Briefly, do you believe that EPA has
14 the legal authority to go as far as
15 they've gone with the four building blocks
16 to bring forth the Clean Power Plan?

17 MR. VAN NOSTRAND: Yes, I do. I
18 share some of the concerns of Mr. Trisko
19 in terms of whether or not this particular
20 proposal is necessarily lawful because of
21 the language in 111(d) which refers to
22 sources. I think you would need to go to
23 actual limits on sources from power
24 plants, and you would use the building

1 blocks to determine how much can we reduce
2 the level of emissions on a mass basis.
3 And you would use the building blocks to
4 figure out what that level is.

5 That's why I do think there is going
6 to be some changes when the final rule
7 comes out. Because I think EPA made a lot
8 of comment on the precise issues that
9 Mr. Trisko mentioned going beyond --
10 outside the fence. I think you can still
11 get there by looking at the language in
12 111(d), and the sources, use the building
13 blocks to figure out what kind of limits
14 you're going to put on the power plants
15 under 111(d).

16 As you mentioned, the 111(b) -- my
17 comments also raised some concerns, and
18 the Kemper plant is one of them. And I
19 followed Senator Manchin's proposed
20 legislation over the last couple of years
21 as to whether or not the EPA can really
22 preclude one of our energy sources through
23 a rule that way and requiring CCS
24 technology when it's really cost

1 prohibitive and not really commercially
2 available. I think that's -- it's clearly
3 causing disproportionate impacts.

4 So it brings me back to the
5 legislative solution which would have
6 addressed the impacts around the country,
7 the winners and the losers. I think the
8 legislative solution is much better at
9 doing that. I think the EPA to some
10 extent has done that with the best system
11 emissions reduction.

12 Because we have a 20 percent
13 reduction in West Virginia versus
14 30 percent under the rule. But there's
15 limitations on how much relief they can
16 provide to a region that's clearly going
17 to be hit much harder than others.

18 SENATOR CAPITO: I'm on the
19 legislation with Senator Manchin. And by
20 the way, he was extended an invitation to
21 attend today. I know some folks from his
22 office were here. He was unable to be
23 here. So I want to make sure you all know
24 that he's as concerned about being here

1 today as we would like to have had him.

2 I would say -- in conclusion, I want
3 to thank you all -- we will keep the
4 record open in case we have additional
5 questions that we may submit to you in
6 writing. I think we've had a really good
7 discussion in a place where we should be
8 having it, in Raleigh County, Southern
9 West Virginia.

10 All the impacts that Mr. Farmer, I
11 think, talked about very -- from his
12 heart, very locally. The bigger impacts
13 as you look at it more regionally, and
14 then some of the global questions too.

15 I would like to take the opportunity
16 to say that we are the representatives.
17 You know, this is going to say hokey
18 corny, but we are the representatives of
19 West Virginians. We are West Virginia's
20 voice. And by hearing what you've said to
21 us today -- if you disagree with the
22 direction that we might be going, we have
23 that prerogative as your voice to say the
24 direction that we think you want us to go.

1 So that is -- in Washington, we've
2 had a lot of gridlock. We've had a lot of
3 pushes and pulls. We've got to get the
4 train back on the track. I think we're
5 trying. We're doing better. I'm more of
6 a veteran than Evan is in terms of
7 legislative service in Washington. I do
8 think we are trying to work in more
9 bipartisan ways on certain areas where we
10 have common ground.

11 My pledge to you is to continue to do
12 that. At the same time, I'm going to be
13 the strong and powerful voice that I wish
14 to be in the United States Senate to
15 reflect Mr. Farmer and his business, and
16 all of our West Virginia constituents that
17 we see every day. And that we care about
18 your relatives, Dr. Richardson. You know
19 it's a great place.

20 So we'll end on this note. Beat the
21 heck out of Kentucky on Thursday. We can
22 all agree on that. Thank you very much.

23 (Hearing concluded.)

24 * * * * *

1 I, Martha Fourney, Certified Court
2 Reporter and Notary Public, do hereby certify
3 that the foregoing hearing was duly taken by
4 me in machine shorthand, to the best of my
5 ability, and that the same were accurately
6 written out in full and reduced to computer
7 transcription.

8 I further certify that I am neither
9 attorney or counsel for, nor related to or
10 employed by, any of the parties to the action
11 in which this hearing is taken, nor do I have
12 a financial interest in the action.

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My commission expires May 27, 2022

Martha Fourney
Certified Court Reporter/Notary Public