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Review of the Environmental Protection Agency's MATS Rule for Power Plants

Testimony before the

Subcommittee on Clean Air and Nuclear Safety,
Committee on Environment and Public Works,
United States Senate

of

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Chairman Carper, Ranking Member Barrasso, and members of the Subcommittee, thank you for holding this hearing today and for inviting the National Black Chamber of Commerce, of which I am President/CEO, to speak on an issue of vital importance to the Black business community and the overall economy. Black-owned businesses are one of the fastest growing segments of the economy, accounting for significant job creation and economic activity. According to the U.S. Census Bureau, there are 1.9 million Black-owned businesses today doing over \$137 billion in business annually, a four-fold gain over when the NBCC was founded in 1993. With over 140 local chapters, the NBCC is the leading representative of Black-owned businesses in the United States and one of the largest Black business associations in the world. We advocate directly on behalf of more than 100,000 businesses.

It is their concerns that I will share with you today. Black-owned businesses, no less than businesses generally, depend on one resource that has always been plentiful in America: reliable, affordable electric service. Electricity is a basic input for just about every American business—to keep the lights on, to keep the registers running, and to operate every kind of equipment. When electricity rates rise, so does the cost of doing business, putting investment, economic growth, and jobs at risk. And when the power goes out, business does too.

This isn't just talk. EPA's own numbers show that its MATS rule will force the shutdown of numerous power plants and require many others to undertake expensive upgrades to continue in operation. EPA projects that forcing plants offline and requiring expensive upgrades will cause electricity prices to rise.

The causation here is straightforward. EPA's MATS rule will force the retirement of a number of coal-fired power plants—indeed, many retirements have already been announced in the time since EPA issued its proposed rule. This will reduce electricity supply, with the effect

of raising rates. Some coal-fired plants that satisfy baseload demand will be replaced with more expensive or price-volatile technologies, with the effect of raising rates. Utilities will have to undertake significant upgrades and other measures to meet the MATS rule's requirements—EPA estimates costs of about \$10 billion per year, while other estimates are almost double that—and that too will have the effect of raising rates. The bottom line is that you cannot impose new burdensome requirements on electricity producers without expecting electricity rates to go up.

The only open questions are the amount of the increase and the collateral damage that it inflicts on jobs and the economy. EPA projects that its MATS rule will boost retail electricity prices by 3.1 percent across the contiguous United States in 2015, but those price increases are not distributed uniformly. Hardest hit will be the Upper Midwest and the middle part of the country from northern Texas up through Nebraska. But if you look at all the different estimates that have been made by various parties, EPA's are definitely at the low end of the spectrum. For example, an analysis from NERA, an economics consultancy, shows average price increases of 12.1 to 23.5 percent in 24 states, with the worst increases in the Midwest and the South. Other projections are in a similar range.

But let's just assume that EPA's low-ball numbers are correct—what does even a 3 percent increase in the cost of electricity do to a business? It is, of course, a cost increase, crowding out other expenditures. It raises the cost of production, putting pressure on profits. It decreases the productivity of capital, because it now costs more to make the same amount of product or to provide the same amount of services. It may force the business to raise prices on products and services. For a business in a competitive market, it will force the business owner to cut other costs, such as labor expenses, by reducing hours or laying off employees. In the worst case, an energy-intensive business like a factory may be forced out of business due to rising

electricity prices and competition from foreign countries that do not artificially inflate energy prices with inefficient environmental regulations. And when a business like a manufacturer closes, that injures the entire community, not just those workers who previously held good jobs. There is a ripple effect that impacts families, local businesses, the local real estate market, and so on. These are the human costs of regulation, and I do not see that EPA has even attempted to account for them.

Although a number cannot fully capture the human costs of a layoff on the worker, his family, and their community, we do at least have numbers—albeit only from sources other than EPA. NERA projects the loss of 1.44 million job-years through 2020, with the greatest losses concentrated in the South and industrial Midwest. EPA, as I said, did not even attempt to estimate job losses. It did, however, put out an estimate claiming that compliance with the MATS rule would boost employment by 46,000 job-years. This is astounding: EPA counts the enormous cost and burden of its rule as a benefit, because it will require utilities to temporarily hire workers to comply, while ignoring the far larger and longer-lasting impact on electricity consumers. At a time when millions of Americans are unemployed, have exited the labor force entirely, or are worried about keeping their jobs, this cynical approach to estimating the job-impact of a major regulation is disrespectful and insulting. A disproportionate number of those struggling today are African-Americans, and this rule will therefore harm them disproportionately.

Rising rates aren't the full extent of the problem, because the MATS rule will also impact the reliability of electric service. Reports by the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, which are together responsible for ensuring the

reliability and resiliency of our electric system, conclude that the MATS rule will put reliability at risk, particularly due to its accelerated implementation schedule of just three or four years.

The evidence on this point could not be clearer. In its most recent annual reliability assessment, NERC identified EPA rulemaking as “the number one risk to reliability over the next 1 to 5 years.” It also identified the MATS rule’s implementation timeline as the primary cause of this risk. According to NERC, “the loss of reliability support functions provided by coal-fired generation [that is forced to retire] may not be easily replaced given the time constraints.” As a result, “the nation’s power grid will be stressed in ways never before experienced.”

These findings echo those of FERC’s Office of Electric Reliability. OER found that EPA’s MATS rule will threaten “adequacy,” which is “the ability of the electric system to supply the aggregate electric power . . . at all times, taking into account scheduled and reasonably expected unscheduled outages of system components.” It will also threaten operating reliability, which is “the ability of the electric system to withstand sudden disturbances,” the “deliverability” of remaining energy resources to customers. In testimony before FERC, representatives of several utilities and grid operators made these same points.

The reports by NERC, FERC, and other organizations are highly technical, and that’s not my area of expertise, but I can tell you what they mean in terms of business. We know that EPA’s MATS rule will cause more blackouts of greater severity and greater duration. To a business owner, a blackout is a business interruption, and that means more expenses and lost revenues and profits. For some businesses, this means we have to start thinking about mitigation—for example, do you buy a generator, do you relocate?—and that means we have to make trade-offs, usually cutting other costs and delaying investments. For others that cannot

afford to make their own arrangements, they will just have to absorb the loss, and that is not something that every business will be able to do. An extended blackout of one week—which isn't common today, but is also not unheard of, following a major storm—can be enough to push a new or struggling business over the edge. An entrepreneur who has tapped all of his credit just to get the doors open cannot afford to close them for a week because the power's out. So those doors may close for good, or he'll have to lay off workers. This is what happens when you can't depend on flipping the switch and having the lights come on.

There are solutions to these problems. The best, although it may be unlikely to occur, is for EPA to withdraw its MATS rule and go back to the drawing board. As I understand it, nothing in the law requires EPA to subject power plants to Section 112 requirements, and EPA can address pollution just as effectively through other Clean Air Act programs, at far lesser cost and economic impact. You, Members of Congress, should make EPA explain why it has chosen to adopt Section 112 regulations rather than proceed under more flexible programs. To date, it has never adequately answered this question.

But let's assume that EPA does not do the sensible thing—what then? In that case, Congress should act. Here are three possibilities:

First is to disapprove EPA's MATS rule under the Congressional Review Act, sending a signal to the public, to EPA, and to the President that Congress places economic growth and job creation ahead of environmental extremism. Sure, the President may veto the disapproval in the end, but that's not a foregone conclusion, given the political cost. He should have to bear that cost, and should not be allowed to evade it.

Second is to enact a "safety valve" to ensure that reliability-essential power plants can remain in service where they are needed to protect against outages. EPA, of course, has no

particular expertise in electric reliability. FERC and NERC do—it is their statutory responsibility. It makes no sense that EPA should be able to claim the authority to wreak havoc on our electric system, while FERC and NERC stand idly by. We should leverage our existing reliability infrastructure here by empowering FERC, NERC, and the regional entities to carve out exceptions from rules that put reliability at risk. A proposal that is carefully targeted at the reliability issue should not be controversial—after all, no one opposes reliable electric service and no one seriously believes that FERC, NERC, and the regional entities would abuse this type of targeted authority. While a safety valve would not address the affordability issue, it would at least give businesses greater peace of mind.

Third is to amend the Clean Air Act to make perfectly clear Congress’s intentions. There is no indication that Congress ever intended to hand over the keys to the nation’s power grid to EPA. But it did intend that EPA can and should achieve environmental goals with a light touch, using the least burdensome regulation possible to meet those goals in a cost-effective fashion. Today, EPA interprets the Clean Air Act precisely backwards, claiming that it is required to implement the most burdensome and expensive requirements, and to do so in ways that achieve little additional benefit over less onerous options. We ought to be able to fix this.

Let me conclude with an observation. Everybody knows that this isn’t really about the environment or public health, because EPA has the tools to address any problems under other sections of the Clean Air Act, without imposing Section 112 requirements on power plants. The real motivation here is the current Administration’s war on coal and policy goal of raising energy prices across the board. If the Congress does not take a stand now, that would be strong evidence to the business community that the Congress has bought in to the Administration’s job-destroying energy agenda.

Again, I thank you for holding this hearing and for inviting me to testify. I look forward to answering any questions you may have.