

Statement of Eugene M. Trisko  
On behalf of  
United Mine Workers of America, AFL-CIO

Before the  
U.S. Senate Environment and Public Works Committee  
Field Hearing  
Beckley, WV  
March 23, 2015

Impacts of U.S. EPA's Proposed  
Clean Power Plan

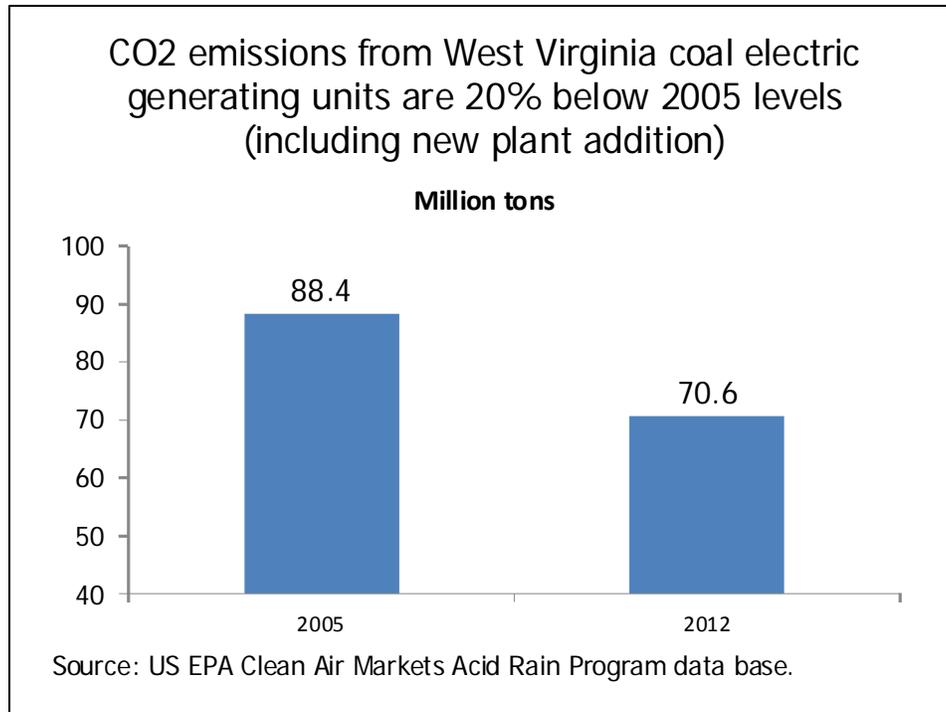
Good morning, Chair Capito and distinguished members of the Committee.

I am Eugene M. Trisko, an attorney in private practice. I am here on behalf of the United Mine Workers of America (UMWA), whom I have represented in environmental and climate matters for some 30 years. A brief bio is attached to my statement.

The UMWA appreciates this opportunity to testify on the impacts of EPA's proposed Clean Power Plan. This proposed regulation is a neutron bomb aimed directly at the heart of West Virginia's economy, and the coal miners, communities, electric generators and allied industries that depend on coal for their livelihoods.

EPA's carbon rule proposes an overall CO<sub>2</sub> reduction equivalent to a 30% cut from 2005 emissions, with reductions measured against each state's 2012 emission rate in pounds of CO<sub>2</sub> per Megawatt-hour (MWh) of fossil-based electric generation. West Virginia is assigned a 20% reduction target by 2030 based on the combined "building block" approach that EPA developed. These reductions would come from increased use of renewable energy and natural gas, efficiency improvements at power plants, enhanced energy efficiency in the residential, industrial and commercial sectors, and decreased use of coal.

U.S. EPA data indicate that West Virginia's electric utilities and independent power producers achieved a 20% reduction of CO2 emissions, measured in tons emitted, between 2005 and 2012.



EPA's proposed rule gives no credit for these reductions, because it uses a 2012 baseline for determining required emissions reductions.

EPA's Regulatory Impact Analysis for State Option I shows total U.S. coal generating capacity declining from 317 GW in 2010 to 195 GW in 2020, an overall reduction of 122 GW. Of this total, 49 GW can be attributed to the Clean Power Plan, with the balance of 73 GW due to compliance with the 2011 MATS rule, lower natural gas prices, and other factors. The adverse impacts of the EPA rule are front-loaded in 2020 due to the "interim" targets that EPA has set for each state.

The Federal Energy Regulatory Commission and regional transmission organizations are now engaged in analyses of the potential adverse reliability impacts of the sweeping changes in the U.S. electric supply system envisioned by EPA's rule.

EPA projects that State Option I would reduce U.S. coal production for electric generation by 27%, or 228 million tons in 2020 relative to the base case in 2020. Production for the overall Appalachian region, stretching from Pennsylvania to Alabama, is projected to decline by 35% from 140 million tons to 91 million tons in that year. West Virginia alone traditionally produces more than 100 million tons of coal annually.

The fundamental problems that the EPA carbon rule poses for West Virginia are two-fold: first, the majority of West Virginia's coal production is shipped to other states that have even larger emission reduction requirements than West Virginia; and second, the majority of the coal-based electricity generated in West Virginia is exported to other states affected by the rule.

In 2013, West Virginia produced 116 million tons of coal. West Virginia's electric utilities and independent power producers consumed 30 million tons of coal from all sources in 2013, equivalent to just 26% of total production. (DOE/EIA Annual Coal Report 2013).

In 2014, West Virginia power plants generated 88,047 GWh of electricity, with total in-state retail electricity sales of 28,919 GWh, equivalent to one-third of total generation. (DOE/EIA, Electric Power Monthly, March 2015).

In short, there is no compliance option for West Virginia – including potential interstate agreements - that can effectively mitigate the adverse impacts of the EPA rule attributable to the compliance actions of other states.

The UMWA has long advocated increased investment in CCS technologies as a means to reduce carbon emissions while preserving coal as a mainstay of U.S. electric generation. Unfortunately, government funding and regulatory support for CCS projects have been disappointing, leaving natural gas as the principal option for future electric generation.

The stakes for West Virginia's economy and jobs are very high. Coal mining in West Virginia generates more than \$15 billion of gross state output, nearly \$4 billion of household income, and 75,000 direct and indirect jobs.<sup>1</sup>

Our estimates of the national job impacts of the Clean Power rule indicate the potential loss of 52,000 permanent direct jobs by 2020 in the utility, rail and coal sectors due to power plant retirements, and the loss of 167,000 total direct and indirect jobs. These direct jobs are all high-paying jobs, typically in rural communities such as those here in southern West Virginia, without opportunities for comparable employment. These impacts do not consider any of the plant closures and job losses expected over the next few years due to the MATS rule and other factors, or the impacts of higher electricity and natural gas prices on other industries.

EPA's proposals for major expansions of state energy efficiency and renewable energy programs interfere with traditional state authority in energy planning, and appear to be well beyond the agency's authority under the Clean Air Act.

In UMWA's meetings with EPA prior to the June 2014 proposal, we urged EPA to focus the rule on options for reducing emissions within the plant fence line. This is consistent with our legal understanding of the scope of Section 111(d). The agency has taken a far more expansive view of its authority. We are mindful in this regard of the cautions recently raised by the Supreme Court in *UARG v. EPA* (2014) of an overly-expansive interpretation of the authority to regulate greenhouse gases under the Clean Air Act.<sup>2</sup>

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<sup>1</sup> Estimates are based on 2013 West Virginia coal production and fob mine price from DOE/EIA Annual Coal Report 2013 (2014) and US Department of Commerce RIMS II multipliers for the West Virginia coal mining industry.

<sup>2</sup> In *UARG*, the Court found that an EPA interpretation of its authority under the Clean Air Act would be unreasonable if:

*"...it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization. When an agency claims to discover in a long-extant statute an unheralded*

UMWA does not oppose efforts to reduce carbon emissions under the Clean Air Act. Our concerns are about the overall design of this proposed rule, and its expansive reach into regulatory and policy arenas that traditionally are the province of state legislatures and regulators.

Finally, we do not know the extent to which other nations, particularly large developing countries, will be willing to commit to a truly global program of greenhouse gas reductions. Our actions will have negligible climate impacts in a world economy that is using more coal and other fossil fuels every day. All indications from the UN climate negotiation process point to extreme difficulty in reaching an agreement in Paris later this year that would lead to meaningful - or enforceable - emission reduction commitments by the developing countries that are now the world's largest emitters of greenhouse gases.

Thank you for the opportunity to appear today.

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*power to regulate 'a significant portion of the American economy,' Brown & Williamson, 529 U. S., at 159, we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.' Id., at 160; See Also MCI Telecommunications Corp. v. American Telephone & Telegraph Co., 512 U.S. 218, 231 (1994); Industrial Union Dept., AFL-CIO v. American Petroleum Institute, 448 U.S. 607, 645-646 (1980) (plurality opinion). ...*

*"...in EPA's assertion of that authority, we confront a singular situation: an agency laying claim to extravagant statutory power over the national economy while at the same time strenuously asserting that the authority claimed would render the statute "unrecognizable to the Congress that designed" it. " ...*

*"We are not willing to stand on the dock and wave goodbye as EPA embarks on this multiyear voyage of discovery. We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate." Slip op. at 19-23, footnotes omitted, emphasis added.*

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*Curriculum Vitae*

Eugene M. Trisko is an energy economist and attorney who represents labor and industry clients in energy and environmental matters.

Mr. Trisko has a dual B.A. in economics and politics from New York University (1972) and a J.D. degree from Georgetown University Law Center (1977). Before entering private practice in 1991, he was an energy economist with Robert Nathan Associates in Washington, DC, (1973-77), an attorney with the U.S. Federal Trade Commission (1977-79), and executive vice president of Stern Bros., Inc., an energy holding company in West Virginia (1986-91).

He was involved from 1981 to 1990 in the legislative development of the Clean Air Act Amendments of 1990, focusing on the design of the Title IV acid rain program. Since 1991, Mr. Trisko has represented labor and industry clients in Clean Air Act implementation and global climate change issues. He is the author of more than 30 articles on energy and environmental policy issues published in economic, energy, environmental, and law journals, and has testified before Congress and state legislatures on numerous occasions.

Mr. Trisko has participated as an NGO on behalf of the United Mine Workers of America in all principal United Nations climate change negotiating sessions subsequent to the 1992 Rio Earth Summit. He develops climate policy position papers for the UMWA and other labor organizations, and serves as General Counsel of Unions for Jobs & Environmental Progress, an association of ten national labor unions. In 2007, he helped to negotiate the clean coal technology and emission allowance allocation provisions of the bipartisan Bingaman-Specter climate bill. *The Hill* recognized Mr. Trisko that year as one of Washington's "Top Grassroots Lobbyists." In 2008 and 2009, on behalf of the UMWA, he helped to negotiate the carbon capture and storage provisions of the Boucher-Rahall and Waxman-Markey climate bills.

Mr. Trisko represented labor and industry clients in the Ozone Transport Commission's 1993-94 deliberations on stationary source emission controls for 12 northeastern states. From 1995 to 1997, he was an associate member of U.S. EPA's 37-state Ozone Transport Assessment Group. Mr. Trisko served for nine years as an appointed representative of the UMWA on U.S. EPA's Clean Air Act Advisory Committee. In 2000 and 2007, he was named by the U.S. Department of State as the non-government representative of U.S. industry and labor in U.S.-Canada air quality negotiations. He is a Fellow of the American College of Environmental Lawyers.