

Table of Contents

U.S. Senate	Date: Thursday, June 9, 2016
Committee on Environment and Public Works	Washington, D.C.
STATEMENT OF:	PAGE:
THE HONORABLE JAMES M. INHOFE, A UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA	3
KATIE DYKES, DEPUTY COMMISSIONER FOR ENERGY, CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION	8
RICHARD REVESZ, LAWRENCE KING PROFESSOR OF LAW AND DEAN EMERITUS, DIRECTOR, INSTITUTE FOR POLICY INTEGRITY, NEW YORK UNIVERSITY SCHOOL OF LAW	13
ALLISON WOOD, PARTNER, HUNTON & WILLIAMS LLP	18
REPRESENTATIVE JACK BONDON, MISSOURI HOUSE OF REPRESENTATIVES, DISTRICT 56	23
MICHAEL MCINNES, CEO, TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., ON BEHALF OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION	28

HEARING ON IMPLICATIONS OF THE SUPREME COURT STAY OF THE CLEAN
POWER PLAN

Thursday, June 9, 2016

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m. in room 406, Dirksen Senate Office Building, the Honorable James Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Barrasso, Capito, Crapo, Boozman, Wicker, Fischer, Rounds, Sullivan, Carper, Cardin, Whitehouse, Gillibrand, and Markey.

STATEMENT OF THE HONORABLE JAMES M. INHOFE, A UNITED STATES
SENATOR FROM THE STATE OF OKLAHOMA

Senator Inhofe. The hearing will come to order. We are going to do something a little bit differently. I just talked to Senator Boxer. She is stuck in traffic and said to go ahead and start without her, so we will do that.

I will do my opening statement and what we will do is I will introduce all of our witnesses. Thank you very much, all of you, for being here today. This will be a well-attended hearing. I am going to be asking something very special of you guys, and that is do as I do, and that is stay within your five minute limit, because we will have a full panel here and we have a vote at 11:15, so we want to accommodate both of those, if that is all right.

So we are here today to talk about the status of the Clean Power Plan in the wake of a historic decision by the United States Supreme Court to stay the rule.

The stakes are high when it comes to the Power Plan. An agency charged with protecting human health and environment is attempting to restructure the entire energy system on imagined legal authority in a manner that will cost billions of dollars, is based on unreasonable assumptions, will increase energy bills, puts grid reliability at risk, and has no impact on the

environment.

If the EPA can convince the courts to uphold their approach to regulating the utility industry through the means Congress never authorized, then they will take these same arguments and use them to restructure every industrial sector in this Country in a manner that appeases the political obligations of the President.

Neither the Clean Air Act nor the regulatory system was meant to operate this way, and the President knows that. That is why he first attempted to progress his climate agenda, as was tried before he was president, going back as far as 2002, to do this through legislation, and what the President is very famous for is doing things that he can't do through legislation through regulation. That is what this is all about.

So without the requisite support of Congress, the President have tasked unelected bureaucrats who are insulated from the consequences. So that is where we are today.

Republicans are not the only ones who rightfully question the agency's persistent attempts to blue legal lines. Democrats, leading environmentalists, governors, well-respected economists, attorneys general, State air officials, economic directors, utilities, manufacturers, American businesses, unions, labor unions, and many more have joined the charge. Some have testified before this Committee, including the former

chief counsel of the Sierra Club, that the Clean Power Plan is legally unsound. President Obama's own law professor testified before the House that what the President and his EPA are doing is akin to "burning the Constitution."

And the latest institution to join the charge is the Supreme Court of the United States. On February the 9th, 2016, the Supreme Court issued a historic stay, which puts the Clean Power Plan on hold until the completion of judicial review and accordingly extends all related deadlines. This is the relief that was requested and the relief that was granted, which even the EPA acknowledged when the Agency thought a stay would never happen.

Yet, EPA is attempting to downplay the significance of the stay and argue against the clean legal precedence as a last-ditch effort to scare States into spending scarce resources complying with a rule that could very well be overturned. It is important to note that a key consideration of the Court when assessing a stay is whether the parties requesting the relief will prevail on the merits. While a stay is not a final decision, it makes clear that the highest court in the Country has serious reservations on the legal soundness of the rule.

Like much of the Clean Power Plan, how the stay actually plays out is up to the States. We have a chart here. If you look at the States in red are the ones that have stopped their

work altogether; the yellow is the ones who have slowed down their work; and then the green are those States, only 11 States, that have continued their work.

So my message to the States and stakeholders and impacted entities is simple and clear: the highest court in the Country, the Supreme Court of the United States, put a hold on the Clean Power Plan and all associated deadlines because it has serious concerns over the legal legality of this rule. As such, no State should fear any penalty for heeding the Court's decision.

So I thank the witnesses for being here. We are going to start and we are going to try to adhere to our deadlines. But as soon as Senator Boxer gets here I will interrupt this proceeding and recognize her for her opening statement.

We have witnesses today: Ms. Katie Dykes, Deputy Commissioner for Energy, Connecticut Department of Energy and Environmental Protection. Nice to have you here, Katie.

Professor Richard Revesz, Lawrence King Professor of Law and Dean Emeritus, Director, Institute for policy Integrity, New York University School of Law; Mrs. Allison Wood, Partner, Hunton & Williams; Mr. Michael McInnes, CEO of Tri-State Generation and Transmission Association, Incorporated, on behalf of the National Rural Electric Cooperative Association; and Representative Jack Bondon from the State of Missouri, around, I guess, the Kansas City area, I believe.

It is nice to have all of you here.

We will start on this side with you, Ms. Dykes. And do try. I will be rude if you don't adhere to your five minutes. Thank you.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF KATIE DYKES, DEPUTY COMMISSIONER FOR ENERGY,
CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

Ms. Dykes. Thank you. Good morning, Chairman Inhofe and members of the Committee. I appreciate the opportunity to be able to be with you and speak here today. My name is Katie Dykes. I serve as the Deputy Commissioner for Energy at the Connecticut Department of Energy and Environmental Protection. This year I also have the privilege of serving as the Chair of the Board of Directors of the Regional Greenhouse Gas Initiative, or RGGI for short

The EPA has recognized multi-State, mass-based trading programs like RGGI as a compliance option for the Clean Power Plan, so I think it is relevant to share a little bit of the successes we have been having from implementing this program over the past several years.

The RGGI program caps covered emissions from new and existing power plants by determining a regional budget of carbon allowances. The nine States participating in RGGI distribute a majority of our carbon allowances through quarterly auctions and we reinvest the proceeds. Collectively, the nine RGGI participating States represent 16 percent of the U.S. economy and generate a total GDP of \$2.4 trillion.

Connecticut is proud to be a charter member of RGGI and we

are pleased that EPA has recognized our approach as an option for Clean Power Plan compliance. Participation in RGGI has enabled our State to make significant reductions in carbon pollution already. Since 2005, the RGGI States collectively have reduced carbon emissions by 45 percent from the electric sector, and we are on track to meet a 50 percent reduction by 2050. We have done all this while growing our GDP by 8 percent and while maintaining system reliability of the electric system.

In Connecticut, we have embarked on a clean energy transition in our State and our region because we are experiencing the threats of climate change. I will be delighted to share some of the examples that we see already, the hundreds of millions of dollars that we have been asking ratepayers to invest to address hardening our electric system, restoring power as a result of massive storms that rolled through our State and our region in 2011 and 2012. We have coastal substations that are facing the possibility of inundation by flood waters now that they are within the 100-year flood zone; and that is not because we moved those substations. So this is a real reliability threat for us.

But we are also pursuing this because it provides tremendous benefits to our electric grid and our economy. Investments in energy efficiency save customers money. Renewables enhance reliability by diversifying our generation

fuel mix and help to moderate electricity market prices.

Independent reports by the Analysis Group have found that the RGGI program produced \$1.4 billion in net benefits to the RGGI region between 2012 and 2014, creating 14,000 job-years and \$460 million in consumer energy bill savings. That is net economic benefits from reducing carbon emissions.

In spite of litigation uncertainty around the Clean Power Plan, Connecticut is one of several States that believe that having more information from EPA about how we might comply with the Clean Power Plan if it is upheld will better inform our decision-making. In April, we were proud to join 13 other States in a letter to EPA requesting additional information and assistance related to the final CPP. Specifically, we asked EPA to provide a final model rule or rules. We asked EPA to provide additional information about the Clean Energy Incentive Program, tracking systems for allowances or credits, and so on.

We asked for this information to assist not only with our continued preparation for CPP compliance, but also to assist us with near-term immediate decisions that we need to make and that we are making about grid planning, about our own State obligations related to our State statutory mandate to reduce carbon emissions by 80 percent by 2050, how to comply with the revised ozone standards, and many other regulatory requirements that we have within our State.

We are making decisions today using the best information that we have available. As energy planners, we engage in modeling, we consult forecasts, and we make assumptions around the possibilities related to environmental compliance obligations, even when they may be uncertain due to litigation. And that extends not just to the Clean Power Plan, but also deciding decisions, nuclear relicensing, a whole host of administrative decisions that need to be factored into planning.

Finalization of a model rule and other information that we have requested from EPA would not impose any new requirements on States or other parties, but it will provide us critical information about what kind of State plans will be approvable should the CPP be upheld. Given the interconnected nature of the electric grid, it is important for us in Connecticut to have information about how we might comply, how our sister States in RGGI might comply, as well as States outside of RGGI, so that we can continue with our planning.

Connecticut and the other RGGI States have some of the most aggressive Clean Power Plan targets in the Country, but we are well placed to meet them because we have taken proactive action, and we encourage others to do the same. Thank you so much.

[The prepared statement of Ms. Dykes follows:]

Senator Inhofe. Right on target. Thank you very much. I appreciate you.

Professor Revesz?

STATEMENT OF RICHARD REVESZ, LAWRENCE KING PROFESSOR OF LAW AND DEAN EMERITUS, DIRECTOR, INSTITUTE FOR POLICY INTEGRITY, NEW YORK UNIVERSITY SCHOOL OF LAW

Mr. Revesz. Mr. Chairman and members of the Committee, I am very grateful to have been invited to testify and will address three issues today.

First, the State does not prevent EPA from continuing work related to the implementation of the Clean Power Plan. Before the Supreme Court's stay, EPA had issued a proposed rule outlining Model Trading Rules, which will provide a framework for States that want to use emissions trading programs to achieve the Plan's emissions limits.

EPA has said that it plans to finalize the Model Trading Rules this summer. EPA is also at work on other implementation-related matters, including a proposal for a Clean Energy Incentive Program, which will provide States with an optional framework for rewarding early investments in renewable energy and demand-side energy efficiency.

Even though these implementation-related activities do not create enforceable obligations for States or sources, opponents of the Clean Power Plan claim that EPA is required to cease work on them. But there is ample precedent for EPA continuing to work on implementation-related matters during a stay of a

regulation. Indeed, EPA has done so under the last three presidential administrations, both Republican and Democratic. In arguing that EPA must put its pencil down, opponents confuse the effects of a stay with those of an injunction, which the Supreme Court did not issue.

In addition to being legal, EPA's continued work on implementation-related matters will have a number of salutary effects. For one, it will aid the many States that, during the pendency of the stay, are voluntarily preparing to comply with the Clean Power Plan. EPA's guidance will also inform the plans of electric utilities and provide more energy predictability to the industry. Finally, if the plan is ultimately upheld, the finalization of the Model Trading Rules will make the development and submission of implementation plans easier for all States.

Second, a decision on the proper timeline for compliance will be made when the stay is lifted and should then take into account the public's interest in timely emissions reductions and developments in the electric power sector.

Opponents of the Clean Power Plan have also argued that the stay has resulted in automatic tolling of all deadlines in the Clean Power Plan, not just the September 2016 and September 2018 deadlines for the submission of plans, but also the deadlines for sources to reduce their emissions, which begin 2022 and end

in 2030. The litigation will undoubtedly be resolved long before these performance deadlines, and the Supreme Court stay does not say anything about how they should be treated.

Nonetheless, earlier this year, the U.S. Chamber of Commerce released a whitepaper arguing if the Clean Power Plan is upheld by the courts, EPA is required to move all of its deadlines into the future by at least the amount of time between the stay's issuance and its expiration. The Supreme Court stay does not mention any such tolling, and by its terms is explicitly limited to the duration of judicial review and is silent on what will happen after that.

Here too there is history under administrations of both parties that makes clear that tolling decisions are made when a stay is lifted, not when it is put in place. And the tolling period is not necessarily equal to the period during which the stay was in effect.

If the Clean Power Plan is upheld, any court considering a request to toll deadlines would surely give substantial weight to the public benefit of adhering as closely as possible to the original timetable that EPA developed to best serve the rule's objectives. The court would also likely take into account developments in the electric power sector, such as faster-than-expected growth in renewable generation, which may make it possible for States and sources to comply with the plan more

quickly than foreseen when the Clean Power Plan was promulgated, and therefore make tolling not necessary.

Third, the Clean Power Plan is a reasonable exercise of EPA's rulemaking authority and is consistent with both the Clean Air Act and the Constitution.

None of the three main arguments made by opponents of the Plan are persuasive. Opponents argue the Clean Power Plan represents an enormous and transformative expansion of EPA's regulatory authority because the rule's guidelines are not based on technological changes that each regulated source can implement independently and assume generation shifting from high-emitting to low-emitting electricity generators. But here too there is precedent for each of these aspects under other regulations conducted by EPA under administrations of both parties.

And the other two arguments that EPA is precluded from regulating the greenhouse gas emissions of power plants because it regulates the mercury emissions of power plants and the constitutional argument about commandeering are similarly erroneous, and in my written testimony I explore these issues in detail.

Thank you very much.

[The prepared statement of Mr. Revesz follows:]

Senator Inhofe. Thank you, Professor Revesz.

Ms. Wood.

STATEMENT OF ALLISON WOOD, PARTNER, HUNTON & WILLIAMS LLP

Ms. Wood. Good morning. It is an honor to appear before this Committee to offer testimony on the implications of the Supreme Court stay of EPA's Clean Power Plan. My name is Allison Wood and I am a partner in the law firm of Hunton & Williams. I have practiced environmental law for almost 18 years, and for over the past decade my practice has focused almost exclusively on climate change.

I represent several electric utility clients in the litigation involving the Power Plan, including in connection with the electric utility industry's application to the Supreme Court for a stay. I am not representing anyone with regard to this testimony, however; I am testifying in my own personal capacity.

A stay of an administrative action such as the Power Plan maintains the status quo during the time that the court considers the legality of the action. During the stay, the Power Plan has no legal effect. Any and all obligations are effectively void, and neither States nor regulated entities can be penalized for refusing to comply with any requirement or deadline in the Power Plan.

Stays are very rarely granted by any court. The Supreme Court only grants a stay where, one, there is a reasonable

probability that four justices would consider the issue one on which they would grant review; two, there is a fair prospect that a majority of the Court would vote to strike down the rule at issue; and, three, there is a likelihood that irreparable harm will result without a stay. To grant the stay of the Power Plan, five justices had to find that all of these things were present.

If the Power Plan is ultimately found to be unlawful, which a majority of the Supreme Court has indicated is a fair prospect, then the Power Plan would cease to exist and would have no legal effect whatsoever. Questions have arisen, however, regarding what happens with the deadlines and obligations in the Power Plan if it is found to be lawful. Typically, all of the deadlines are tolled and are then extended by the period of time of the stay.

So, for example, if the stay were in effect for 500 days, you would then extend all of the deadlines in the Power Plan by at least 500 days. This is exactly what has happened with other EPA rules that were the subject of a judicial stay.

Tolling all of the deadlines in the Power Plan was explicitly sought in some of the applications before the Supreme Court. Even for those stay applications that were not explicit, however, the solicitor general of the United States noted to the Supreme Court on behalf of EPA that the request to toll all of

the deadlines was inherent. The Supreme Court granted every stay application without any qualification, meaning that the Court gave the applicants, including those who were explicit in their request, the relief that they sought.

Statements that insinuate that not all of the deadlines will be tolled have a deleterious effect on States and regulated entities who become fearful that if they do not continue to plan and work toward compliance with the Power Plan, that they will not have enough time to do so if the rule is ultimately upheld by the courts. This fear effectively negates the relief provided by the stay.

States and regulated entities should be able to rest secure in the knowledge that if the Power Plan is ultimately upheld, that all of the deadlines will reset and that they will not have any less time to prepare than they would have had in the absence of the stay. That is what status quo means.

Some States have decided to continue to work on the Power Plan for a variety of reasons, which they are free to do. States that do not want to work on the Power Plan, however, should not be forced to do so, something that EPA has acknowledged.

The problem is that in trying to provide additional tools to the States that want to continue to work, EPA ends up forcing States and regulated entities that do not want to work during

the stay to do so. For example, if EPA issues a proposed rule, which it is planning to do with the Clean Energy Incentive Program, States and regulated entities need to comment on the proposal or risk not having any say in the design or implementation of aspects of the Power Plan. In addition, with any final rule EPA may issue, such as the Model Trading Rules, the States and regulated entities have to decide whether to litigate those rules or waive their right to judicial review.

The providing of tools to States that want to continue to work cannot force action by those States and regulated entities that do not want to act during the stay.

Thank you again for the opportunity to testify today.

[The prepared statement of Ms. Wood follows:]

Senator Inhofe. Thank you very much, Ms. Wood.

Representative Bondon.

STATEMENT OF REPRESENTATIVE JACK BONDON, MISSOURI HOUSE OF
REPRESENTATIVES, DISTRICT 56

Mr. Bondon. Good morning, Mr. Chairman, esteemed members and Senators of the Committee. My name is Jack Bondon, and I serve the people of Missouri's 56th Legislative District, including my home town of Belton and parts of southern Kansas City in the Missouri State House of Representatives.

Thank you for inviting me today to share my perspective as a State legislator on the implication of the Supreme Court's stay on the Clean Power Plan.

My State of Missouri benefits in many ways by having affordable electricity prices. In fact, our electricity prices are more than 10 percent below the national average. Currently, Missouri relies on coal for nearly 80 percent of its electricity. But at the same time Missourians recognize the need for an affordable, sustainable, and reliable mix of energy sources. To achieve the right mix for our State, Missouri released our own State comprehensive energy plan last fall, in October of 2015, that includes a renewable efficiency provision and a renewable portfolio standard.

In addition, in 2014, the Missouri legislature passed a bill, signed by our Governor Nixon, which establishes how Missouri should set its own CO2 standard for power plants. In

short, Missouri has taken the lead in deciding its own energy future.

Unfortunately, the Clean Power Plan would substitute the EPA's energy preferences for the well thought out choices made by Missourians. Not only will the Plan override Missourians' choices about their electricity mix, it will almost certainly increase our electricity prices. A quick, rough calculation using the EPA's own \$37 per ton estimate equates to a cost of over \$6 billion by 2020, which could increase electricity prices in Missouri by double digits.

Now, I am a legislator too. I understand there are many interested parties to this discussion; the energy sector, economists, ecologists, scientists, State agencies, and more. But I don't work for them. I work for the people that I serve, and I look at the Clean Power Plan from their perspective; the perspective of the ratepayer, the consumer, the single parent, the retiree on a fixed income, the small business owner struggling to make payroll for their employees. I am their voice in Jefferson City and I am their voice here today.

Missouri is home to more than 1.2 million low-income and middle-income families, about half of our State's households, that already spend 18 cents of every dollar they take home on energy, and my constituents tell me they cannot afford to pay higher utility prices.

In Missouri, opposition to the Clean Power Plan has been a bipartisan effort. Attorney General Chris Koster, a Democrat, joined 26 other States in challenging the Clean Power Plan, and, legislatively, I introduced a bill that would suspend all State activity on the Clean Power Plan until the issue has been resolved by the courts. To further demonstrate our legislature's opposition to the Clean Power Plan, Missouri's fiscal year 2017 budget strictly prohibits the use of any funds to implement the Plan. The final vote approving that piece of the budget was bipartisan in the House and unanimous in the Senate.

In addition to introducing legislation, I authored a letter which was cosigned by 16 of my fellow House colleagues, inquiring Governor Nixon as to whether the Missouri Department of Natural Resources intends to continue to take steps to implement the Clean Power Plan while the stay is in effect, and I have not yet received a response.

In summation, I believe that the Clean Power Plan is bad for the people that I represent and, in Missouri, many of my colleagues on both sides of the aisle agree. So I am pleased that the Clean Power Plan has been stayed by the Supreme Court, and it is my hope that the Plan will be withdrawn or overturned.

With that, Mr. Chairman, esteemed Senators, thank you for the opportunity to testify before you today, and I look forward

to your Committee's discussion.

[The prepared statement of Mr. Bondon follows:]

Senator Inhofe. Thank you, Representative Bondon.

Mr. McInnes.

STATEMENT OF MICHAEL MCINNES, CEO, TRI-STATE GENERATION AND
TRANSMISSION ASSOCIATION, INC., ON BEHALF OF THE NATIONAL RURAL
ELECTRIC COOPERATIVE ASSOCIATION

Mr. McInnes. Mr. Chairman, members of the Committee, I am Mike McInnes. I am the CEO at Tri-State Generation and Transmission Association. Thanks for the opportunity to come and discuss the effects of the Clean Power Plan on my organization, on our consumers, and the implications of the Supreme Court stay.

Tri-State is a wholly member-owned generation and transmission cooperative serving in Colorado, Nebraska, Wyoming, and New Mexico. We are owned and governed by our members, and operate on a not-for-profit basis. To serve our members, we have more than 5,300 miles of high-voltage transmission system and generation sources that include coal, natural gas, hydroelectric, wind, and solar power.

Despite significant investments in renewables, energy efficiency, and distributed generation projects, which is projected to make up about 25 percent of energy that we will distribute to our members in 2016, Tri-State relies heavily on coal and natural gas generation to maintain reliability and to control costs. Our reliance on coal and our business model force us to be active in the regulatory and legal arenas, which

is what I am here to discuss.

As a cooperative, Tri-State operates differently and has different risks compared to investor-owned and municipal utilities, a fact that EPA ignored in the proposed Clean Power Plan, and why Tri-State and other cooperatives were active in the rulemaking process and challenged the rule in court.

Let me just give you a couple of examples. Cooperatives have different financial goals. Our primary goal and contractual obligation is to provide reliable, affordable, and responsible power to our members. This is different than investor-owned utilities whose rate of return is tied to equity, which gives them an incentive to build new infrastructure. The more new infrastructure they build, the more returns they receive. These incentives do not exist for Tri-State and other cooperatives.

Our costs are spread over fewer customers. Tri-State and its members have fewer consumers per mile than other types of utilities, which means we have fewer consumers over which to spread those costs. Typically, cooperatives have 1 to 11 customers per mile of infrastructure, as compared to investor-owned and municipals, which have over 35.

When Tri-State needed generation, coal was our only option. In the late 1970s and early 1980s, when the cooperatives were growing, in that same period, the Power Plant and Industrial

Fuel Act was passed by Congress and construction of natural gas and oil plants wasn't allowed. We had to choose between nuclear and coal. We chose coal because it was proven and it was affordable. On the positive side, our fleet is relatively new compared to other utilities.

Cooperative plants have longer remaining useful life. Tri-State has invested hundreds of millions of dollars in our plants to improve efficiency and add-on pollution control upgrades. Because of these investments and the fact that our plants are a little newer, they still have significant remaining life; and we face large stranded costs if we are forced to shut them prematurely.

Since the EPA failed to address these issues and other legal issues we raised during the rulemaking process, our board of directors felt it necessary to challenge the rule in court that resulted in the current stay. While the rule is stayed, Tri-State has continued discussions with State regulators to ensure that our concerns are heard. The five States we operate in have taken different approaches to the stay: two States are continuing to develop the Plan a little bit slower; three of them have taken the approach to "put the pencils down."

Several State regulators justify moving forward based on EPA's gentle threat that deadlines may remain the same if the rule is ultimately upheld. We feel it is wasteful to spend

taxpayer and ratepayer money developing a plan for an unknown target. There are so many variables that could change: a new rule, a modified rule, a new president withdraws the rule or proposes a new ones; markets could change, new technology could be developed. So any plan developed today will likely have to be redone. And as we realized with the Clean Power Plan, early investments don't always receive credit in the future.

I am often asked, if you don't support the Clean Power Plan, what would you suggest? We are already achieving reductions in carbon emissions as a result of maintaining highly efficient power plants and investing in renewable projects, and we continue to support research and development.

In the end, although Tri-State and other cooperatives are different, we do have a desire to protect the environment, while continuing to provide affordable and reliable energy to our members. We simply believe a different approach is needed to mitigate CO2 emissions.

Thank you.

[The prepared statement of Mr. McInnes follows:]

Senator Inhofe. Well, thank you very much, Mr. McInnes.

Let me compliment all five of you; you stayed within your five minutes. Maybe we can do the same thing up here.

I was just notified that Senator Boxer is not going to be able to be here. At this time I will go ahead and submit her statement, without objection, for the record.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Representative Bondon, I am going to read a quote, and I want to make sure that Senator Capito hears this quote too. EPA Administrator McCarthy recently stated, "I can't find one single bit of evidence that we have destroyed an industry or significantly impacted jobs other than in a positive way."

Is that true in your district?

Mr. Bondon. Well, I would take exception to that, Senator. Missouri is home to two large coal companies, Peabody Coal and Arch Coal, both out of St. Louis, Missouri, who have recently filed for bankruptcy. Now, there certainly are a number of reasons why a company does that, but the uncertainty created by the Clean Power Plan and the future of moving away from coal has real impact to their employees.

Senator Inhofe. They filed bankruptcy, and this happened after they were aware of the rule?

Mr. Bondon. That is correct.

Senator Inhofe. What is going to happen to those jobs, then, if they go under?

Mr. Bondon. Well, they are trying to figure out how to reorganize right now. But almost certainly some people will lose their job.

Senator Inhofe. Mr. McInnes, along the same line,

yesterday, an environmental organization released a report concluding the judicial stay is economically unjustified because the coal industry will not experience any irreparable harm.

What is your response to that?

Mr. McInnes. Mr. Chairman, I am not sure how a statement like that could be made. As you have just asked about, the coal industry has almost collapsed; there is no ability to make future plans based on that. And I would say that whether or not the industry has been, or a specific instance, certainly the continued onslaught of regulations against generation resources have increased costs to the point that plants are uncompetitive.

Senator Inhofe. Very good.

Now, Ms. Wood, you spent a long time during your opening statement talking about the most controversial parts of this whole thing, and that is tolling. Is there anything you want to add to that?

Ms. Wood. Senator, I guess the one thing I would add is, when you look at any instance of where an environmental rule has been stayed, the timelines have always been tolled. To the extent they were not done on a day-for-day basis with the period of the stay, it is not that they were shorter than the stay; they would be longer.

So, for example, with the cross-State air pollution rule, that was stayed for a little more than two and a half years.

But then all of the deadlines were extended by three years. And the reason for that was because a lot of those deadlines started on, say, January 1st, so just adding the days on would have pulled it off the calendar. But you didn't shorten them; you lengthened it. And saying that this rule won't be tolled or couldn't be tolled at the end of the day I think is just a scare tactic to make people work.

Senator Inhofe. Thank you for that clarification.

Mr. McInnes, Tri-State has made a significant investment in pollution control technology due to other EPA air rules. Now, what is the purpose of these investments if the Clean Power Plan forces the premature closure of these plants, and how would your members recover their costs?

Mr. McInnes. In this instance, there are no investors to share the costs; the owners of these generation facilities will pay that entire cost. And on that point, we have some of the most controlled resources in the Country because of these upgrades that we have made; and now to have to walk away from those before they have lived their useful lives will be a significant burden on our customers.

Senator Inhofe. Thank you.

Representative Bondon, you and I talked about this. Although the rule is now stayed, how has the Clean Power Plan already impacted coal plants and utilities in your State? In

other words, is the damage already done?

Mr. Bondon. Well, I believe that the coal industry sees the writing on the wall, and to that extent I do believe that there is some damage already done. But more than that, Senator, the State of Missouri took this into its own hands; we created our own State comprehensive energy plan to try to create that energy mix in the future. And to the extent that the Clean Power Plan has interfered with our State plans, it has thrown a lot of uncertainty into the mix.

Senator Inhofe. All right, I appreciate that. I have another question, but I am going to stay within my five minutes and give it to one of the other members up here to respond to.

Senator Cardin?

Senator Cardin. Thank you, Mr. Chairman, and thank you for this hearing.

First, let me make an observation. I listened to the Chairman's opening statement and, to say the least, we have some different views as to the impact here. It seems to me that when we complain about regulations, a lot of times it would be better if Congress did its responsibility and did its work. This is going to be the first Congress which will not have a legacy of passing legislation to help protect our environment. Instead, what we seem to do is always have bills that prevent the Administration from moving forward, rather than looking at ways

that we can help build upon the environmental legacy of this Country.

Senator Inhofe. I don't very often do this. Let me interrupt. We'll extend your time.

Senator Cardin. Thank you.

Senator Inhofe. We passed the most significant environmental bill in 25 years just two days ago.

Senator Cardin. I will be glad to yield to the Chairman.

Senator Inhofe. No. The TSCA bill.

Senator Cardin. Oh, well, Mr. Chairman, some of us have different views on that. And I applaud you for that. It is always good when we move together. That deals with chemicals. And I think it is important that we have laws that work. I regret, though, that we did prevent the States from fully being able to fill the void until the Federal Government actually has an effective regulation. That was part of the problem, I think, on that issue. But that is the system working.

We have not done that with the Clean Water and defining the Waters of the U.S. Instead, we have seen the Supreme Court decisions many years ago and we have been blocked from trying to get constructive legislation to deal with clean water.

In the clean air issues we have not been able to pass additional legislation. The President's regulation, the Administration's regulation on clean air really yields to the

States to figure out how it is best for them to comply with the national standard, and States are able to do that.

Before the President's or before the Administration's Power Plan Rule, Maryland, along with other States, entered into RGGI. They were moving forward in trying to deal with the issues.

I guess my point is this, that rather than looking at ways to stop the Administration from moving forward with regulations, it would be good if Congress just passed laws as to how we can meet our obligations for clean air. Maryland has done its job; it did its job without the Federal Government telling us what we had to do.

But the problem is we are downwind, so we can only do certain things. We need an effective national strategy on this, and that is what the Administration's regulations are attempting to do.

And I would welcome my colleagues working with me, as we did in TSCA, in figuring out how we can provide a greater legacy on the clean air and clean water, but we haven't done that. And the Administration is carrying out its responsibilities. The Supreme Court decision is a stay. We will see what the courts end up and we will see how the Supreme Court rules on the merits of the regulation. But a stay is a stay, and States are still moving forward.

I guess my question is to either Ms. Dykes or Professor

Revesz. If Maryland needs advice from the EPA as to how to move forward on its efforts to deal with clean air, as I understand it, the Supreme Court decision does not prevent a State from continuing to move forward in its efforts, and the Administration can provide that guidance so that they can do what they think is right for the health of their citizens and, under federalism, provide some help for our Nation in developing the right policies for clean air.

Mr. Revesz. That is correct, Senator.

Ms. Dykes. And while I am not here to speak for my sister RGGI State of Maryland, we were pleased to be signing on to the letter to EPA in April along with our counterparts in the State of Maryland requesting that assistance.

Senator Cardin. So my concern, Mr. Chairman, is that if you are saying that if you interpret a stay to say that we can't move forward, first of all, that is not what a stay does. But, secondly, that is preventing us from doing what we think is right. Maryland was able to move forward in reducing its carbon footprint on its generation of electricity. We were able to do that in a way that benefited the people of Maryland, benefited our economy, and I think provides a model for what can be done in a sensible way to deal with clean air.

The good news about the Administration's regulation, as I understand it, is that our regional effort is taken into

consideration in meeting our goals and that Maryland has the flexibility to determine how it meets its goals; it is not mandated under regulation. Am I correct on that?

Ms. Dykes. That is the hallmark of the Clean Power Plan and of the RGGI program, that mass-based, multi-State programs provide tremendous flexibility to States to determine exactly how they will meet their goals, and a number of the measures that we have used to achieve the success in RGGI has depended on not only our RGGI program, but also renewable portfolio standards, energy efficiency programs, which I think some of the witnesses here have mentioned that although their States may not be working on Clean Power Plan, they are working on advancing those types of measures, which will only contribute to their ability to comply.

Senator Cardin. Thank you.

Mr. Chairman, I will yield back the last 18 seconds.

Senator Inhofe. Thank you, Senator Cardin.

Senator Capito.

Senator Capito. Thank you, Mr. Chairman. I want to thank our witnesses today for their great testimony.

I just want to make a few comments before I ask my question specific to my State of West Virginia. First of all, when I hear that no irreparable harm has been done because of some of the regulatory measures that have been taken, come and visit the

State of West Virginia. No joblessness? We have lost over 20,000 jobs in the coal mining industry. We have suffered irreparable harm, and I keep repeating it in this Committee meeting, but I am going to keep repeating it because the folks of West Virginia are seriously hurting.

We have also, I just asked my staff to find out, from 2006 to 2014, our per kilowatt hour cost of electricity in a cheap State much like Missouri in terms of cheap energy, has already gone up 47 percent. This is without the Clean Power Plan. But we are one of the 29 States that has chosen not to move forward for obvious reasons, but an official from the Department of Environmental Protection has stated that based on his experience, "I have determined that implementing this will be extremely complicated and time-consuming." I think everybody on the panel would admit that it is complicated and time-consuming.

Since 2014, the State has devoted five employees with 27 hours or more of implementing and trying to understand this Section 11(d) rule, and they estimate that to move forward would be another 9 senior staff employees with another 7,100 hours of effort.

This is in the middle of a budget crisis in our State, due in large part to the impact of the coal industry. We are over \$360 million in the hole. What is going to happen is we are losing our teachers, but we are also losing our DEP employees.

Our State can no longer afford the measures that are going to be required. So we have stopped, to wait and see what happens.

So, Representative Bondon, you talked about the impact monetarily in a large way of what you think this would be, \$6 billion by 2030, and then we talk about cost-benefit analysis. You know, we hear that if the Clean Power Plan goes forward, there will be a miniscule result in terms of what effect it would have on the global environment in terms of temperature change. So we have to look at that as a cost-benefit analysis.

And I would like to say one thing in response that I forgot to say in the beginning, whether Congress has acted or not. Congress did act. I led the way with a Congressional Review Act that basically said the majority of the Senate and the majority of the House do not agree with the Clean Power Plan. Went to the President's desk, which he promptly vetoed, to nobody's surprise.

So would you have a comment on the cost-benefit, where you see this for your State and maybe the Nation?

Mr. Bondon. Yes, Senator, and thank you for the question. As I mentioned in my testimony, a rough estimate, but the best that we could come up with using the EPA's own \$37 per ton estimate, with the mass-based reduction goals that would have to happen in Missouri, it would cost, on the low end, \$6 billion.

Now, it is very, very hard to figure out how that would be

distributed across the State, because some of the IOUs, some of the munis, some of the coops have different mixes and they would have to change at different rates. So to put it towards an individual customer is hard to do. But some of the best estimates that I have is that it would be a double-digit increase in utility prices.

Senator Capito. Right.

Mr. Bondon. And I think, Senator, to your larger point, we have to ask ourselves where is the balance.

Senator Capito. Right.

Mr. Bondon. How do we strike the balance between moving into cleaner energy and more reliable energy versus the cost that it is going to take to do that, and when our consumers and our constituents are able to afford that.

Senator Capito. Right. Thank you.

Ms. Wood, in a recent letter from EPA Acting Administration McCabe, she stated that, "During the pendency of the stay, States are not required to submit anything to EPA and EPA will not take any action to impose or enforce obligations." I know there is a bit of a disagreement on what this really means. Is this the case as the EPA continues its work, in your opinion, on the Clean Energy Incentive Program and Model Trading Rules?

Ms. Wood. Thank you, Senator. Before I answer your question, I wanted to just commend your State for its leadership

in the litigation challenging this rule. Your citizens are very lucky to have Attorney General Patrick Morrissey and Solicitor General Elbert Lin leading the State effort. I think in large part due to them is why we have the stay that we have.

In terms of is what EPA is doing, does it impact those States that don't want to act? Yes, it does. And it will impact those man-hours that you were talking about in your State because when EPA publishes its proposed rule on the Clean Energy Incentive Program, West Virginia is going to have a choice to make, which is either comment on that part of that rule or forego that opportunity.

And if, at the end of the day, the rule is ultimately upheld and West Virginia decided not to comment on it, then they have lost a valuable right. Yet, by forcing them to read and digest and comment on a rule would be more man-hours devoted to a plan that the Supreme Court thinks has a fair prospect of being struck down.

Senator Capito. Thank you.

Senator Inhofe. Thank you, Senator Capito.

Senator Whitehouse?

Senator Whitehouse. Senator Carper is not before me?

Okay, very well, then. Thank you.

Mr. Chairman, this hearing marks an anniversary. Exactly 30 years ago this week, in June of 1986, Senator John Chafee,

Republican of Rhode Island, then chairman of the EPW Subcommittee on Environmental Pollution, convened a two-day, five-panel hearing on ozone depletion, the greenhouse effect, and climate change. His opening remarks warned of, and I will quote him here, "the buildup of greenhouse gases which threaten to warm the Earth to unprecedented levels. Such a warming could, within the next 50 to 75 years, produce enormous changes in a climate that has remained fairly stable for thousands of years." He went on to say, "There is a very real possibility that man, through ignorance or indifference, or both, is irreversibly altering the ability of our atmosphere to perform basic life support functions for the planet."

The contrast is stark between what Senate Republicans and their witnesses were saying 30 years ago and what the GOP is saying today. Thirty years ago Senator Chafee declared, "This is not a matter of Chicken Little telling us the sky is falling. The scientific evidence is telling us we have a problem, a serious problem."

Thirty years ago Senator Chafee said, "By not making policy choices today, by sticking to a wait and see approach, by allowing these gases to continue to build in the atmosphere, this generation may be committing all of us to severe economic and environmental disruption, without ever having decided that the value of business as usual is worth the risks. Those who

believe that these are problems to be dealt with by future generations are misleading themselves," he said. "Man's activities to date may have already committed us to some level of temperature change."

Thirty years ago Senator Chafee knew there was much yet to learn about climate change. Scientists will agree that there still is. He said then that we have to face up to it anyway. He said, "We don't have all the perfect scientific evidence. There may be gaps here and there. Nonetheless, I think we have got to face up to it. We can't wait for every shred of evidence to come in and be absolutely perfect. I think we ought to start to try and do something about greenhouse gases, and certainly to increase the public's awareness of the problem and the feeling that it is not hopeless. We can do something."

Senator Chafee was an optimist. He used to say, "Given half a chance, nature will rebound and overcome tremendous setbacks. But we must, at the very least, give it that half a chance." But he also knew, Mr. Chairman, that nature's tolerance is not unlimited. At those hearings 30 years ago, Senator Chafee warned, "It seems that the problems man creates for our planet are never-ending. But we have found solutions for prior difficulties, and we will for these as well. That is required is for all of us to do a better job of anticipating and responding to today's new environmental warnings before they

become tomorrow's environmental tragedies."

That was 30 years ago. Of course, all of this predated the Supreme Court's Citizens United decision, which has allowed the fossil fuel industry to effect a virtual hostile takeover of the Republican party, rendering that party today the de facto political wing of the fossil fuel industry and producing hearings like today's, after 30 years.

Senator Inhofe. Thank you, Senator Whitehouse.

Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman. Mr. Chairman, I believe my job as a United States Senator is to look at policies that are before us, look at the issues that are before us, and try to determine what that best policy would be. And I think good policy requires balance. Good policy has to look at the issue, but it also has to look at the impacts of what is being presented to us.

Under the Clean Power Plan, the State of Nebraska is facing a 40 percent reduction in its carbon emissions rate, and that makes the State of Nebraska rank as one of the 10 biggest losers. I was on that list as well. Nebraska is a public power State, 100 percent public power. So our ratepayers, which means our families in the State of Nebraska, are going to be harmed by this policy.

Iowa is a leader in wind energy, a leader in this Country.

Yet, under the Clean Power Plan, you know what? They don't get any credit for having that wind power. You tell me how that makes good policy. It does not.

Nebraska's families are going to face affordability and reliability uncertainties. In fact, our DEQ in Nebraska, the employees there have already expended 2,000 hours on interpreting and preparing for the implementation of this Plan. That consumes vital State resources that I believe should be devoted to addressing pressing issues in our State that are affecting the citizens of our State.

Mr. McInnes, in your testimony you discuss the location and population density challenges that Tri-State must overcome in order to supply members with that reliable and affordable energy, and you certainly, as a cooperative, understand public power; you understand the cost to families. And you serve in the panhandle of Nebraska, which is extremely rural. In some counties there is less than 1 person per square mile. My county is one of those.

Mr. McInnes, can you tell me, on average, how many consumers per mile your member systems in Nebraska serve?

Mr. McInnes. Thank you, Senator. I will follow the lead of Ms. Wood and congratulate you and your State for being public power. I believe electricity is important to modern society, should be supplied to everyone at cost base. Those members that

we serve in the panhandle of Nebraska average 1 to 2 consumers per mile of infrastructure.

Senator Fischer. And how does that compare nationwide to the average density?

Mr. McInnes. If you look at the nationwide, it is somewhere more in the high 20s. But as you get in the urban areas, that can exceed 35 or 40.

Senator Fischer. Right. So as I believe public power, whether it is cooperatives or the public power MPPD, OPPD, LES in the State of Nebraska, and many of our rural electric cooperatives, in my opinion, you are providing a public service, because it gets more expensive when you have to provide to rural areas, correct?

Mr. McInnes. It certainly does. And we only have to look at history. When the IOUs were unwilling to go out into the rural areas, and that was what formed the public power districts and cooperative.

Senator Fischer. Right. And under this Clean Power Plan, if you have to shut down one of your plants that you built because of policies at the Federal level when you built those plants and built those coal-fired plants, it was a decision that impacted your choice, if you have to shut them down or curtail any of them, how is that going to affect the cost to Nebraska families?

Mr. McInnes. Interestingly enough, Senator, because we serve in multiple States, if one of the States, and it has been mentioned here several times today that each State can go whichever way they want to, if the State of New Mexico makes us shut down one of our resources, it is going to affect the consumers in Nebraska, because we serve on a postage stamp rate across our four States.

Senator Fischer. And the power plants in general, they run most efficiently and with the highest environmental controls at peak operation, and it is my understanding that curtailing production is going to decrease that efficiency, it is going to increase emissions. Is it true that Tri-State, you won't be able just to ramp down your coal plants; you are going to have to shut them down in order to comply with the Clean Power Plan? And since you still need to supply your customers, won't you need to ensure that you have another baseload resource in order to maintain that? And I think it is educational to people to explain what a baseload resource is.

Mr. McInnes. Thank you, Senator. What you have said is certainly true. Baseload facilities are designed for that very thing, to operate all the time, and those are the backup. As you get into what we call peak loads, when people come home at night, turn on their TVs, coffee pots, that sort of thing, we can use other resources. And there are certainly limits to

which you can take them as you back them down, and they will have to be shut down at some point.

Senator Fischer. Thank you very much, sir.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Fischer.

Senator Wicker, Senator Carper has graciously said that you can go ahead and go first.

Senator Wicker. Well, Senator Carper is a gracious colleague, and I appreciate that.

Let me say this about the process, Mr. Chairman, and I want to measure my words. Senator Whitehouse is a friend of mine; we work together on the Ocean Caucus. We work together on treaties and have gotten them ratified together.

It is insulting for a member of this Senate to come in here and to suggest that this hearing, the very holding of this hearing somehow demonstrates that members of the Congress are wholly owned by the fossil fuel industry. And I resent that and I think it is beneath my friend from Rhode Island to have done so. He has left the room, but I am going to say it anyway, because I know that he will be able to hear this.

Presumably, it is improper for Senator Capito, for example, to raise the question in light of the 40 percent increase in power rates for her constituents. What difference is this going to make if it is implemented anywhere? What difference does it

make on world temperatures? Supposedly, it is improper for us to even have a hearing and ask those questions.

This hearing today complies with the procedures that we have always had. There are two Minority witnesses; there are three Majority witnesses; questions being asked on both sides. So I resent the implication that somehow this hearing shouldn't be held at all, and that it indicates we are wholly owned.

Now, let me ask you this, Ms. Wood. If the State of Maryland needs advice about implementing a voluntary plan that they have, they can go to the EPA for advice without the necessity of the Clean Energy Incentive Program, or CEIP, is that correct?

Ms. Wood. Yes, that is correct.

Senator Wicker. Now, Ms. Wood, is CEIP a separate regulation or was it part of the Clean Power Plan rule as it was finally submitted to the Congress and to the public for implementation?

Ms. Wood. It was part of the final rule. I believe, without having seen it, that the proposed rule might be flushing it out, but it is part of the final rule.

Senator Wicker. Okay. And if EPA wants to go back, now that there is a stay, and implement a separate Clean Energy Incentive Program, then they can do so by implementing a new rule and sending it through all the process, is that correct?

Ms. Wood. Absolutely, as long as it wasn't connected to the Clean Power Plan. In other words, if they wanted to have a separate program that achieved what the Clean Energy Incentive Program does, they could.

Senator Wicker. But for now it has been stayed.

Ms. Wood. Yes.

Senator Wicker. Now, let me also ask you, Ms. Wood, with regard to the effect of the stay application on the deadlines throughout, it is a fact that EPA actually conceded your point in their pleadings, is that not correct?

Ms. Wood. Yes, the Solicitor General of the United States conceded that point.

Senator Wicker. In his opposition to the stay, and this is on page 6 of your testimony, the solicitor general of the United States noted that the stay applicants explicitly or implicitly asked this court to toll all relevant deadlines set forth in the rule. That is the statement of the Administration's principal lawyer with regard to the effect of the stay.

Ms. Wood. Yes, it is.

Senator Wicker. And he went on to say a request for such tolling is inherent in the applications that do not explicitly address this subject, is that correct?

Ms. Wood. Yes, that is correct.

Senator Wicker. So it is not only your position, it is the

position of the chief lawyer of the Administration that all of the deadlines are tolled.

Ms. Wood. Yes.

Senator Wicker. And there is precedent to back you and the solicitor general up in this regard, is that correct?

Ms. Wood. Yes.

Senator Wicker. Thank you very much.

Let me just ask, in the few seconds I have remaining, Mr. McInnes and Representative Bondon, the President went before the voters in 2008 and said we can have clean coal. He said that, didn't he? I think you nodded, Representative Bondon, but you gave an affirmative answer.

As a matter of fact, the plan that Missouri has put forward, as a matter of fact, attempts to make that promise come true by using coal, by eliminating particulate emissions into the environment, and actually fulfilling the promise that the President has now gone back on, to have clean coal as a reliable source of power, is that correct?

Mr. Bondon. That is correct, and that is our hope as a State.

Senator Wicker. Thank you very much.

Mr. Bondon. Thank you, Senator.

Senator Inhofe. Thank you, Senator Wicker.

Again, Senator Carper has agreed to let Senator Barrasso go

ahead of him. Senator Barrasso.

Senator Barrasso. Thanks, Senator Carper. Thanks, Mr. Chairman.

Ms. Wood, there is a belief by some environmental advocates in the EPA that this Supreme Court stay on the Clean Power Plan doesn't include all the aspects of the so-called Clean Power Plan. The advocates in the EPA seem to believe that the Court somehow meant to allow the EPA to continue working on aspects of the rule despite the Court ordering that the rule itself be stayed at the request of the States and the utilities, and it seems to me that these advocates and the EPA want to debate what the meaning of the word "is" is.

As you say in your written testimony, the stay preserves the status quo. New work on aspects of the so-called Clean Power Plan is not preserving the status quo to me it means except in the minds of this out of control EPA. The idea that the Supreme Court would issue a stay in this case really is extraordinary, and the justices wouldn't take such an action if there weren't really serious concerns.

David Doniger, Senior Natural Resources Defense Council attorney, a liberal group, said in January of this year that if the Supreme Court issued a stay on the Clean Power Plan, he said it would be an extraordinary step. In fact, in Energy and Environmental Daily article in January, he said it is

extraordinary to get a stay from the D.C. Circuit; it is extra, extra, extraordinary to get one from the Supreme Court.

So we all know the Supreme Court made that extra, extra, extraordinary step, and they did it for a good reason. So could you share with us why you think the Supreme Court took this extraordinary step to block the EPA's Clean Power Plan rule with a stay to preserve the status quo? And how do you believe the Michigan v. EPA case may have played a role in this?

Ms. Wood. Thank you, Senator. You are correct that this was an extraordinary step. To my knowledge, the Supreme Court has never stepped in before and stayed an EPA rule before the lower court had ruled on the merits of it. So it was an extraordinary step.

I think there were really two primary reasons why the Supreme Court took the step. The first is that there are many legal infirmities with the rule, and those were laid out for the justices to see. And the other is accompanying the stay applications were 84 declarations from a wide number of sectors, from States, from electric utilities, from coal producers, from business interests, talking about how they were going to suffer irreparable harm in the absence of a stay.

So when you talk about the Michigan v. EPA case and how that may have played in, that was a rule, the mercury and air toxic standards NAAQS rule, where power plants were required to

put on very, very costly control equipment. That rule had not been stayed. It eventually worked its way up to the Supreme Court. The Supreme Court struck the rule down, but by that point almost all of the plants had already spent the money and put the controls on. And, indeed, EPA Administrator McCarthy then made the statement that, you know, this really wasn't a loss for EPA.

Senator Barrasso. I appreciate your comments.

Mr. McInnes, in your testimony you mention the integrated test center in Wyoming. Could you spend a little time describing the center, how the center is going to help develop technologies that can make burning coal cleaner for everyone; it can protect coal jobs not just in Wyoming, but in other States, and make sure that coal is not a stranded asset for our Nation?

Mr. McInnes. Thank you, Senator. Tri-State has been involved with the concept of this center for a number of years. In fact, our board had indicated a desire to significantly invest in that prospect for that very reason. This test center will find a home at the Basin Electric Cooperative Dry Fork Station near Gillette, Wyoming. The purpose of this test center is to try and find ways that carbon can be utilized. If it is an issue, then let's see if we can find some way to use it productively and still allow the all-of-the-above fuel selection that I think we need in this Country.

The purpose of the test center will be to provide a place for those entrepreneurs who want to come test these technologies, see if they can improve better ways of capturing and ways of commercialization of these carbon emissions. In fact, it is going to be the home of the XPRIZE carbon prize, so we are very excited to be a participant in that. We look forward to being able to continue utilizing coal as a resource.

Senator Barrasso. Well, thank you very much for that and for your commitment.

I would mention, Mr. Chairman, that at the opening ceremonies for that Dry Fork Station in Wyoming there was bipartisan joining in the celebration and participation. Both Senator Heitkamp from North Dakota and I were there, along with Senator Enzi.

Thank you very much, Mr. Chairman.

Senator Inhofe. Thank you, Senator Barrasso.

Senator Carper, you have been patient and you have been very generous. I have counted the time that we have gone over, and it is about three minutes, so feel free to take what time you need.

Senator Carper. Thanks so much, Mr. Chairman.

I just want to start off today welcoming all of our witnesses. It is good of you to come.

I want to take a minute and just commend Senator Inhofe for

his leadership. When a major environmental laws signed 40 years ago by then President Gerald Ford, something called the Tax Exemptions Control Act, which he held as maybe one of the foremost environmental pieces of legislation of a generation. I think he was proud to sign it into law.

It turned out not to be that good. And instead of actually regulating toxic substances in our environment, out of the hundreds of toxic chemicals, potentially harmful chemicals could have been regulated by EPA, I think over 46 were regulated; in the last 20 years maybe none. And under this man's leadership -

Senator Inhofe. Would you yield just for a moment? When Senator Cardin made the statement that nothing is coming out for a period of two years out of this Committee that would be environmental progress, you and I shared the podium at a news conference yesterday where several declared that the action that we took in passing the TSCA bill on chemicals could go down as the most significant environmental improvement in 25 years. So that is the reason I was making that correction.

And I appreciate very much working so closely with you and with many of the more progressive members of your party in making that become a reality. We did a good job in this Committee.

Senator Carper. We did a great job, and thank you for your

leadership.

Senator Markey stood up at the press conference. An interesting array of Democrats and Republicans from fairly well to the left and fairly far out there to the right who had banded together and worked with Environmental Defense Fund, National Wildlife Federation, and chemicals groups and business groups to come up with that. That was very, very good, and compromise is going to actually be good for our environment and be good for the health of our citizens.

I said at the close of the press conference maybe if we could take on an issue as complex and as difficult as toxic substances control, maybe we could actually make progress in some other areas, and one of the areas that we need to make progress is the area that we have been talking about here today.

I have been working on Senator Inhofe on this Committee for about 15 years. We worked very closely together on something called Diesel Emissions Reduction Act, which I think is another good piece of environmental legislation that George Voinovich and I, former governor and former Senator from Ohio, worked on before he retired. So my hope is that those two good examples of areas where we could work together.

The issue of multi-pollutants, something that is near and dear to our hearts in Delaware, we are the lowest lying State in America, lowest lying State in America. I was a Naval flight

officer in the Vietnam War and moved to Delaware, got an MBA and ended up getting elected as the State treasurer, congressman, governor, and now Senator, so I have been around the State for a while and love the place, and the people have been great to let me serve them.

We have a bunch of beaches. I am told we have more five-star beaches in little Delaware, 26 miles of coastline with the Atlantic. I am told we have more five-star beaches than any State in America. Tourism is really important for us. Agriculture is very important for us. Chemical industry is important for us. Financial services is important for us.

But if you drive south in Delaware on State Route 1 passed Dover and head on down almost to the town of Milford and make a left turn, head east, you drive out toward Prime Hook Beach. It used to be you would drive east towards Prime Hook Beach and you go through Prime Hook National Wildlife Refuge, and then you get to the Delaware Bay. And there is a place to park cars or your boat, trailers or whatever, and people put their boats in the water.

And they don't do that anymore. And the reason why they don't do that anymore is because where they get to where the boat ramp and everything and the parking lot used to be, it is water; and somewhere under that water is what used to be a parking lot. And you can stand there by the edge of the water

and look off an area about 1:00 looking east toward New Jersey, and you see what looks like part of a concrete bunker sticking up out of the water.

I was born in 1947. I have a photograph from 1947 that shows that concrete bunker not almost submerged in water, but 500 feet west of the waterline. West, toward Maryland.

Now, for a State that really depends a lot on tourism and our beaches, Maryland is a similar situation, Virginia and others, this really gets our attention. Something is happening here. With apologies to Stephen Stills, something is happening here, and what it is is pretty clear to me, pretty clear to us in Delaware.

When I was governor, I used to say that I could literally shut down my State's economy and we would still be out of compliance with respect to clean air standards; and it was because all the bad stuff was being put up from States like my native West Virginia, Ohio, Indiana, Illinois, Tennessee, and so forth. Bad stuff they put up in the air create cheap energy for themselves. They use these smokestacks that go up 500 feet in the air. The currents just bring the stuff to the east coast and those of us, Ben Cardin here in Maryland and others, we are at the end of America's tailpipe because the bad stuff would just come to us.

And it wasn't really fair because we would have to clean up

our emissions more and more and more all the time, and at the same time the States we competed with for jobs would end up with cheap energy and we would have expensive energy. They would have cleaner air, better health, and we would have dirtier air; and it just wasn't fair. It just wasn't right.

I remember getting involved in a discussion with a bunch of utility CEOs maybe 10 years ago. I worked for years on Clear Skies legislation. Remember George W. Bush had a proposal they called Clear Skies, and Lamar Alexander and I worked on legislation. We called it Really Clear Skies. It involved sulfur dioxide, nitrogen oxide, mercury, and CO2, multi-pollutant legislation. And we worked on it for years, worked on it with George Voinovich for years.

I remember meeting with a bunch of utility CEOs, gosh, it might have been 10 years ago, 8 years ago. They came from all over the Country to my office to talk with me about Really Clear Skies, and they said, here is what we need, Senator, here is what we need you to do.

A guy from a utility down south, he was kind of a curmudgeon guy, pretty plain spoken. He said, here is what you need to do, Senator. You need to tell us what the rules are going to be; you need to give us a reasonable amount of time and some flexibility; and get out of the way. That is what he said. You need to tell us what the rules are going to be, give us some

flexibility, a reasonable amount of time, and get out of the way.

I have known Gina McCarthy for a good while. She is not a hair-on-fire kind of person. Before she came here, she worked, I think, not for one Republican governor, I think for two. And one of the reasons why the Administration asked her to do this job, it is a tough job at EPA, as you know, is because she is able to work with people of both parties, with the business community, try to find the reasonable middle. And I honestly believe she has worked hard to do this.

And I think in crafting the Clean Power Plan, I think what they actually tried to do at EPA is take the advice of that curmudgeon, the old utility CEO from 10 years ago, and put into a proposal something that meets those four criteria.

I would just ask Katie, if you would, just react to all that. It is a lot to throw at you, but sort of react to what I have just said.

And I appreciate the chance to go on for a little bit here, Mr. Chairman.

Katie, please.

Ms. Dykes. Well, I can say that we are really proud in Connecticut to be part of RGGI, including with Delaware, and the experience that we have shown in that program really demonstrates that States can comply with the Clean Power Plan

without challenging the cost and the reliability of their grid.

All of the things that have been said about the Clean Power Plan are things that were said about RGGI when we were standing up that program many years ago. People said that it would drive up rates, and yet in Connecticut we have seen some of the lowest rates ever in the last decade, just announced coming into play this summer.

And part of that is because of RGGI and the cap that we placed on carbon, but also it is because we have seen the writing on the wall and harnessed these economic trends that are already driving lower carbon reductions. We are retiring the last coal plant in Connecticut. It just announced its retirement a couple months ago; and that is because the economics of natural gas, the incredible efficiency of new combined cycle gas power plants and the low cost of domestically produced natural gas make that generation a source of carbon reduction and lower costs, lower electric rates for our citizens.

So we see the benefits of compliance. We have seen \$1.3 billion in net benefits from implementing this program and we are excited to share the lessons that we have learned in our States with other States.

Senator Carper. Thanks so much.

Mr. Revesz, would you just react briefly to what I have

said? Just very briefly.

Mr. Revesz. Excuse me, Senator?

Senator Carper. Would you just react briefly to what I have just said.

Mr. Revesz. Yes, Senator. I completely agree and was very moved by what you said concerning Delaware's inability to meet the national ambient air quality standards were it not for reductions that have to take place in upwind States. There is nothing Delaware can do. There is nothing that any of the northeastern States can do unless States that are upwind from them take measures.

Actually, administrations of both parties over a long period of time have been working on this. Finally, the Supreme Court upheld the Transport Rule after prior rules had been struck down by the D.C. Circuit. And now the effort to bring those emissions under control are under strong legal footing.

And it is important to emphasize that administrations of both parties have been working on this. The Clinton Administration had a NAAQS rule, the administration of President George W. Bush had the Clean Air Care program, and then the Obama Administration had CSAPR, the Transport Rule. And finally those rules are under strong legal footing.

These rules are enormously important for the health of Americans, and EPA has done these rules paying attention to both

the costs and the benefits. Each rule has a regulatory impact analysis that shows that the benefits of these rules significantly exceed the costs. I don't mean to de-emphasize the costs. There are costs, but the benefits are much greater than those costs.

Senator Carper. Thanks so much.

Mr. Chairman, could I just --

Senator Inhofe. Can I come back to you?

Senator Carper. That would be great. Thanks so much.

Senator Inhofe. Let's do it that way.

Senator Carper. Thanks so much for all this time.

Senator Inhofe. And we will hear from Senator Sullivan now.

Senator Sullivan.

Senator Sullivan. Thank you, Mr. Chairman. Thank you for calling this hearing. I think it is a really important hearing.

Thanks for the witnesses. I know it is a very distinguished panel.

You know, one of the things that comes up very frequently in this Committee is the commitment that we all have to clean air, clean water. My State of Alaska has a lot of water and a lot of air and a very pristine environment, so we are certainly a State that is very committed to that. Matter of fact, we have some of the cleanest water and cleanest air in the Country, in

the world.

But one of the things that I have always been concerned about is that we also need to abide by the law or the Constitution, especially Federal agencies. And, in my view, the EPA is creating a record on their major rules that they have been promulgating as not abiding by the law, and a number of us have been concerned about it. We raise it. I think everybody should be raising it on both sides of the aisle; not just Republicans, Republicans and Democrats, because part of our oversight jurisdiction here is making sure that agencies do what is required by the law.

And as all of you know, being legal professionals and experts in your field, Federal agencies cannot just undertake actions because they feel like it; they have to have a statutory or constitutional authority to act. Would everybody on the panel agree with that very basic premise of administrative law?

[Affirmative nods.]

Senator Sullivan. Is that a nod from everybody? I am showing that everybody is nodding.

I want the EPA officials to make sure they see this because it is a pretty uncontroversial statement, but sometimes doesn't always seem to make it over to the agency.

So it is not just me or others saying that. If you look at the history in the last couple years, Utility Air Regulators v.

EPA, they lost that Supreme Court case; EPA v. Michigan, they lost that Supreme Court case; the WOTUS rule right now has been stayed; and, pretty incredibly, the clean power rule has been stayed.

My team did a little bit of research and we asked CRS. They said looking at a review of treaties on the Supreme Court practice and Supreme Court previous decisions, this is the first time of any Supreme Court case that they have ever found where the Supreme Court of the United States placed a stay or injunction of a Federal regulation before a lower court had ruled on the merits, where the lower court had not granted a stay previously. First time in the Supreme Court's history.

So my question to you is, why do you think they did that? Very, very dramatic. And I am going to give you a little hint of why I think they may have done that. It is not just the track record where they lose in every case, but not too long before that case was announced, Gina McCarthy was asked on TV show if she thought she was going to win the EPA v. Michigan case. And that was a Supreme Court case.

Of course, it is normal for an administrator to say, of course we are going to win, we did a good job. But then she went on, and she should have just stopped, because then she went on to say publicly, which is a statement I still find stunning from a Federal official, to say, "But even if we don't win, the

rule was promulgated three years ago. Most of them are already in compliance," meaning the American people and private sector companies. "Investments," hundreds of millions, "have been made, so we'll catch up. We're still going to get to the toxic pollution of these facilities."

So she is saying even if we don't win, we win. Even if we lose in court, we win anyways because we promulgated this and the poor sucker companies have had to abide by it even if they are going to get the rule overturned.

So I would like your views. Ms. Wood, I will start with you. Why do you think the Supreme Court took really historic action to stop the Supreme Court? And, again, it is not just Republicans talking about this. Lawrence Tribe, when he was asked and was arguing against this rule, was very critical, saying it was unconstitutional and was quotes as saying burning the Constitution should not be part of our national energy policy.

Do you think the EPA has been burning the Constitution?

Ms. Wood. I think that the historic nature of the stay, and you are correct that it is historic, does definitely stem from all of the things that you have noted, which is the fact that the Michigan v. EPA case, billions had been spent to put on control equipment for a rule that was then found unlawful.

Senator Sullivan. And the Administrator seems to view that

as part of her strategy. Even if we lose later, it took five years to get to the Supreme Court, everybody had to comply anyway, so who cares about the rule of law.

Ms. Wood. Right. And, you know, at least in that rule, if that was her strategy, it worked and, you know, the Supreme Court may have been very dismayed by that. And the statements that she made were part of the stay briefing. And also as you note, and as Professor Tribe had noted, there are a lot of legal infirmities with this rule that I am sure got the attention of the Supreme Court.

Senator Sullivan. Any other members just want to comment on why they think the Supreme Court took this historic action?

Mr. Revesz. Senator, I think EPA's record before the Supreme Court is not nearly the one that you characterized.

Senator Sullivan. They are zero for three in the last Supreme Court.

Mr. Revesz. No. They won *EME Homer City Generation v. EPA*, the Cross-State Air Pollution Rule.

Senator Sullivan. What year was that?

Mr. Revesz. That was in 2014.

Senator Sullivan. Okay.

Mr. Revesz. The UR case, they lost one issue; they won one issue. The one issue they won on affected the vast bulk of the emissions.

Senator Sullivan. Utility Air Regulators, they lost that big time.

Mr. Revesz. No, the Utility Air Regulators case, the UR case, Utility Air Regulator case, there were two issues in that case.

Senator Sullivan. Justice Scalia said they were violating the separation of powers.

Mr. Revesz. On one issue. And that issue affected 50 percent of the emissions.

Senator Sullivan. Well, a pretty big deal.

Mr. Revesz. And they won on 87 percent of the emissions, or some number in the high eighties.

Senator Sullivan. The WOTUS rule, they are losing that.

Professor, why do you think the Supreme Court took this historic action against the EPA? They have never done this before. It is a big, big deal. Why do you think they did it? Do you think it had anything to do with Gina McCarthy's outrageous statement?

Mr. Revesz. I don't know why they did it, Senator. It is an important rule. But I wanted to address the issue of the track record. The WOTUS rule, the recent decision last week was a procedural decision; it did not affect the merits of the case at all.

Senator Sullivan. They stayed the entire rule. Why do you

think 31 States in the United States are suing the EPA?

Mr. Revesz. Well, some States are hurt by the rule; other States are supporting the rule. There are States on both sides.

Senator Sullivan. Thirty-one States. That is a lot of States.

Mr. Revesz. Senator, the numbers are somewhat in flux. It is 27, it is 29. There are quite a number of States on the other side as well.

Senator Sullivan. Not 31.

Mr. Revesz. That is true. As I said, some States would like to see this issue not addressed at all; others would like to see it addressed --

Senator Sullivan. But don't you think it has to be legal? Everything the EPA has to do has to be based in statute or the Constitution.

Ms. Woods, do you think what the EPA is doing is based in statute or the Constitution?

Mr. Revesz. I do, Senator.

Senator Sullivan. No, I asked Ms. Woods. Sorry.

Ms. Woods. No, I don't think it is, and five justices on the Supreme Court appear to agree with me. Also, just to follow back, I represented the Utility Air Regulatory Group in that case, Utility Air Regulatory Group v. EPA, and I absolutely count it as a victory for my client.

Senator Sullivan. Absolutely.

Ms. Woods. And in the EME Homer case, that was a split victory between EPA and the people challenging that rule, and I would like to note that it went back down to the D.C. Circuit to look at the "as applied" challenges to those States, and it was thrown out in 13 States by the D.C. Circuit.

Senator Sullivan. Thank you.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Sullivan.

What I would like to do is go back for a short time for Senator Carper and then get to Senator Markey, if that is acceptable.

Senator Carper. I will be Senator Markey's warm-up act here.

I would say to Senator Sullivan it is always good to have you here in these deliberations.

Sometimes EPA can't win for losing. When it comes to enforcement of the Clean Air Act, they get sued because they are not doing enough. When it comes to enforcement of the Clean Air Act, they get sued because they are not doing enough. When it comes to updating ambient air quality standards, they get sued because they are not going far enough fast enough. They get it coming and going. They get it coming and going. They have a hard job to do because they are going to get sued either way.

I think they are trying to do their job, and I am just reminded that we need to do our job. It shouldn't be left up to the agencies to try to find a way through regulations to a policy that protects our health, protects our environment, but also provides certainty and predictability that businesses need.

One of the things I know we all agree on is the major job that we have here is to provide certainty and predictability for businesses so that they can go forward, be successful, not at our harm, but in order to have a strong economy. And the question always before this Committee has been can we have cleaner air, cleaner water, and also have a strong economy. I think we can have both.

The other thing it would be nice to do is actually, if the Supreme Court had a full complement of justices, and my hope is that somehow before the end of this year they can have a starting lineup. It is like trying to have a baseball team and not have a shortstop, or have a baseball team and not have a right fielder. So I think they need the full team on the field.

Thank you very much.

Senator Inhofe. Thank you, Senator Carper.

Senator Markey, before you ask your questions, we have been talking about the great environmental success that you and I, Senator Carper, and others on this Committee had two days ago, so this is very significant, I think, that we recognize that we

have made some great progress.

Senator Markey.

Senator Markey. Thank you, Mr. Chairman, very much.

And TSCA is an historic achievement. We all came together. We all stood together to produce that historic environmental bill. And I look forward to the day where we all stand together on climate science and stand together on the new energy policy for the future, and hope that that day may be arriving in the near future, perhaps after a Supreme Court decision on the Clean Power Plan. But my ability to prognosticate the future is more limited than my ability to talk about the past and the proud past that we just had yesterday.

Senator Inhofe. Well, yes. Let me just interrupt for a moment here and say that Senator Whitehouse, in his time this afternoon, was talking about one of our colleagues said 30 years ago, and I was thinking to myself it was seven years ago that Al Gore said there would be no more ice on the North Cap in five years. I can remember in my other committee that I had, the Armed Services Committee, it was 20 years ago because I was sitting there when they said in 10 years we would no longer need ground troops. So I think it is better to kind of look into the future and evaluate the present.

Senator Markey. I agree with you. Predicting the future is a very perilous terrain for politicians. We work towards

creating the future without knowing exactly how it is going to play out. And how the Supreme Court acts is obviously something in the future.

In 2007, in the most important environmental decision that has ever been decided, *Massachusetts v. EPA*, it was a five to four decision, which, by the way, makes the case for not having a four to five Supreme Court; otherwise perhaps we might not have had a five to four decision. But Justice Kennedy voted in the majority, five. So that is where we are going to be today, predicting the future, where these justices are going to be and even who will be on the Supreme Court. We don't even quite know that when that case might be argued. So as Yogi Berra used to say, making predictions is a very hard thing to do, especially about the future.

So my view is that we should just look at the case as it sits before us and just look back a little bit in time because many of the complaints that come from members about the impact on the coal industry, well, in the Waxman-Markey bill, we built in \$200 billion for carbon capture and sequestration. We built in billions of dollars for coal miners if they needed it, that is, if carbon capture and sequestration was not possible. We built all that money in, \$200 billion.

You know what Peabody Coal said? You know what Alpha Coal said? Do you know what Arch Coal said? They said no, we don't

want it. That was the money that could have been there for carbon capture and sequestration. They said no. The Edison Electric Institute endorsed Waxman-Markey, but the coal industry exercised their veto power in the Senate, rejecting \$200 billion for carbon capture and sequestration, rejecting the money for the coal miners.

So as we hear today the concern about the coal miners, just remember that. It was Peabody Coal that made that decision. All of their stocks, of course, now are down in single digits or lower, in the negative.

But that is a little bit of history. I just want to say that it was an attempt to solve this issue, work together on that issue in a way that dealt with all of the interests, all of the parties. It wasn't going to be all or nothing, 100 percent versus zero; it was going to be something that tried to deal with the legitimate need to create a bridge for each and every technology to make it to this cleaner energy future.

But it was Peabody Coal that said no. And it is Peabody Coal that is funding the brief at the Supreme Court. Peabody Coal funding the brief in the Supreme Court. Just remember that. Same company. Same interest. Same money. Same short-term perspective. So that is what we are talking about.

And nothing, to use one of my father's terms, nothing frosts me more than having these very same people still arguing

that it can't be done and we can't make the transition, even as we are going to have 16,000 new megawatts of solar and 9,000 new megawatts of wind installed in the United States this year. It is going to be the vast majority of all new electricity in the Country.

But we weren't leaving coal behind, I just want to say that. Carbon capture and sequestration is a technology that could have been invested in by public monies that Peabody Coal said they did not want. So I just don't want to hear the crocodile tears from Peabody Coal and Arch Coal and Alpha Coal.

So, Professor Revesz, the stay issued by the Supreme Court does not prohibit the EPA from working on activities related to the Clean Power Plan; it only prohibits it from enforcing the requirements, is that correct?

Mr. Revesz. That is correct, Senator.

Senator Markey. Thank you. Now, during the stay, the EPA is allowed to issue guidance and tools to help States that have decided to continue their plans, is that correct?

Mr. Revesz. That is also correct. And it has also been the practice of administrations of both parties in the three last presidential administrations when stays like this were issued.

Senator Markey. And critics have accused the EPA that by not announcing the effects the stay will have on all of the

complying States forces States to continue work towards the Clean Power Plan using time and resources toward a rule that may be overturned. However, whether or not to change the compliance deadlines, and by how much, has traditionally been decided on a case-by-case basis and not issued until the ruling, is that correct?

Mr. Revesz. That is correct. It has always been issued when the stay was lifted at the end of the litigation.

Senator Markey. So from my perspective, the EPA has been very flexible in its dealings with the States. I know that there are some States that perhaps don't like this idea. I am sure there were many, many States that weren't happy with Brown v. Board of Education. Might have even been 31 States that were unhappy with Brown v. Board of Education; and they would have sued to overturn if they could get away with it. And I am sure there are many other decisions in history that 31 States might have sued to say we don't want to move to the future; we don't want to change the way in which we do business.

But it doesn't mean that that case is going to get overturned in the Supreme Court. It doesn't mean that enough justices aren't going to come together to look at the accuracy of the argument being made by the Administration that they are upholding existing law and acting under existing law. That is what the Supreme Court did in 1954. That is what this Court

also will have to decide.

And I just think it is premature and not a good use of our time to be projecting what the Supreme Court is actually going to decide. This is just a discussion of the law. And I think that the law, as it is being interpreted by the Administration, is right on the money.

So, Professor, I am just going to give you a final minute. Just tell us how we should be viewing this issue now, going forward over the next year. What is the perspective that we should have, in your opinion, in viewing this historic case as it moves to the Supreme Court?

Mr. Revesz. Thank you, Senator. I think we should understand that there is a lot of strength in the Administration's position that the arguments that EPA is using unprecedented regulatory techniques, so, for example, that the rule is assuming there will be some fuel shifting going on or that the rule is imposing certain obligations that a plant cannot meet within the four walls of its plant, that all of those techniques have been used in the past not only by Democratic administrations, but also by Republican administrations. They are part and parcel of all of these efforts that Senator Carper referenced concerning the effort to control interstate emissions. Those are all the standard toolkit of EPA.

There is another big argument about why EPA shouldn't be able to regulate the greenhouse gas emissions of power plants under Section 111(d) because it is regulating the hazardous emissions of power plants under Section 112. What EPA is doing in this case is essentially consistent with the approaches of administrations of both parties going back to 1990, going back to 25 years.

And on the constitutional side, Professor Tribe was mentioned several times. He made three arguments very forcefully at a House hearing. I was a Democratic witness at that hearing. Two of those arguments aren't even being made anymore by the opponents of the Clean Power Plan.

Senator Inhofe. Okay, we are going to have to cut this off.

I would like say, Senator Markey, they will all be glad to know that we have just been saved by the bell.

[Laughter.]

Senator Inhofe. There is a vote that is underway and --

Senator Markey. Thirty seconds, if I may?

Senator Inhofe. Thirty seconds, and that is it, and then I have an idea. Go ahead.

Senator Markey. And I look forward to that.

Senator Inhofe. See, if you guys don't know you there, we really like each other.

Senator Markey. We do. We are good friends. We are good friends.

Senator Inhofe. Really. And he has every right to be wrong.

[Laughter.]

Senator Markey. You know what my father used to say? If two people agree upon absolutely everything, then you don't need one of those people. So we need each other on climate science. We need each other to have this debate.

So, again, Waxman-Markey, EEI endorsed, General Electric, DuPont, Applied Materials, Timberland, Dow Corning, Alcoa, Johnson & Johnson. We had this broad base of support. General Motors, Chrysler, all the auto industry, they all endorsed Waxman-Markey. The outlier was the coal industry, the people paying for this brief before the Supreme Court, Peabody Coal. It is the same culprit. It is the same rear view look at history, and we were trying to give them a bridge to the future so they did not have to go into bankruptcy.

Do you think they wish they could go back to 2009 again and grab that money? You know they would. Okay? They made a big historic mistake. The Supreme Court will not make a historic mistake.

Senator Inhofe. Thank you, Senator Markey. Now I am going to take the Chair's prerogative and ask Ms. Wood. You have

heard this back and forth. Do you have any comments to make about the legal characterization of what we are in the middle of right now? One minute, and then we are out of here.

Ms. Wood. One thing I would note is that Peabody Energy is only one of 149 different entities that are challenging the Power Plan. And I think the thing that we need to remember is going back to the administrative law principle that we all agreed to, which is that EPA can only act within the bounds of the statute. And five justices on the Supreme Court have indicated in a historic stay that they think that EPA is not acting within the bounds that you all, Congress, have set for them to operate.

Senator Inhofe. That is good.

We are adjourned.

Again, thank you, all the witnesses, for enduring this.

[Whereupon, at 11:18 a.m. the committee was adjourned.]