

Congress of the United States
Washington, DC 20515

May 15, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy:

We write regarding the Environmental Protection Agency (EPA) proposals to regulate carbon dioxide (CO₂) emissions from fossil fuel fired existing electric generating units under section 111(d) of the Clean Air Act, and specifically regarding the agency's pending "federal plan" rulemaking and consultations with small business entities. In particular, in January 2015, EPA announced it was considering a potential Small Business Advocacy Review (SBAR) panel for this rulemaking.

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA is required to convene a SBAR panel before publishing a proposed rule that will have a significant economic impact on a substantial number of small entities, including small government entities like publicly owned electric utilities.¹ Under SBREFA, EPA has an obligation to solicit and receive meaningful stakeholder input during the development of the federal plan the agency intends to propose this summer when it issues the final rule under Section 111(d). As set forth in EPA guidance entitled "Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act 52 (Nov. 2006)," the process allows small entity representatives (SERs) to provide advice and recommendations to the SBAR panel on the material EPA has prepared in connection with the rulemaking.²

It is our understanding that EPA informed participants involved in this process on April 30, 2015, that it was officially convening a SBAR panel. At the same time, however, it would appear that EPA is very close to the time when the agency will be submitting the proposed federal plan to the Office of Management and Budget (OMB) for interagency review. It is not clear how EPA can solicit, receive, and incorporate meaningful stakeholder input from small entities into the soon-to-be proposed federal plan if the agency intends to meet its summer 2015 deadline. In light of the SBREFA requirements and EPA's guidance on the SBAR panel process, we request your response to the following questions:

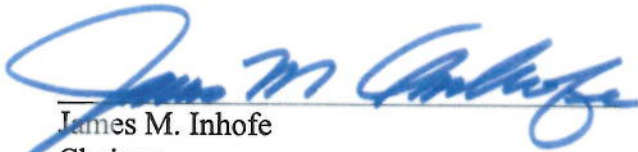
¹ See 5 U.S.C. § 609.

² See guidance at p. 52 and available at <http://www.epa.gov/rfa/documents/Guidance-RegFlexAct.pdf>.

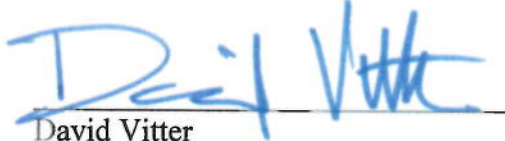
1. Will EPA provide comprehensive, but understandable, information to SERs regarding its proposed federal plan rulemaking and comparable alternatives to the proposed rule that would minimize economic impacts on small entities?
2. Given the fact that EPA notified small entities on April 30, 2015, that it intends to officially convene a SBAR panel and the outreach meeting with SERs is scheduled for May 14, 2015, how can the agency provide sufficient information far enough in advance of both the preliminary outreach meeting and the SBAR meeting with SERs to afford a meaningful opportunity for SERs to review and analyze the information and to develop substantive comments and recommendations for the SBAR panel's consideration?
3. Will the draft of the proposed plan submitted to OMB for interagency review reflect the stakeholder input from the SBAR panel, which is expected to be convened only weeks before the draft plan would need to be submitted to OMB for interagency review if EPA is to meet its summer 2015 deadline for issuing the proposed rule?

Please provide written answers to the committees no later than June 5, 2015. If you have any questions, please contact Mandy Gunasekara of the Senate Majority Environment and Public Works Committee staff at 202-224-6176 or Mary Neumayr of the House Majority Committee on Energy and Commerce Committee staff at 202-225-2927.

Sincerely,



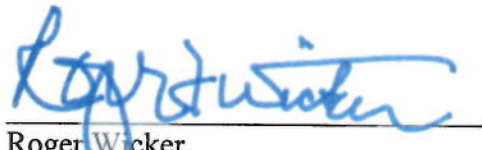
James M. Inhofe
Chairman
Committee on Environment & Public Works



David Vitter
Chairman
Committee on Small Business & Entrepreneurship



Jeff Sessions
United States Senator



Roger Wicker
United States Senator



Shelley Moore Capito
United States Senator




Fred Upton
Chairman
Committee on Energy and Commerce



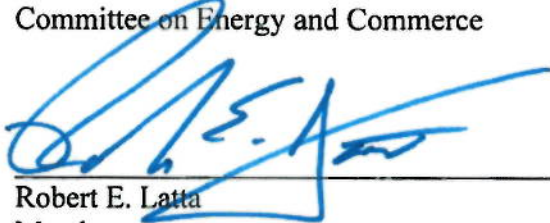
Steve Chabot
Chairman
Committee on Small Business




Ed Whitfield
Chairman
Committee on Energy and Commerce
Subcommittee on Energy and Power




Joe Barton
Chairman Emeritus
Committee on Energy and Commerce




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Mike Pompeo
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David B. McKinley
Member
Committee on Energy and Commerce



H. Morgan Griffith
Member
Committee on Energy and Commerce



Billy Long
Member
Committee on Energy and Commerce



Richard Hudson
Member
Committee on Energy and Commerce

cc: The Honorable Barbara Boxer, Ranking Member
U.S. Senate Committee on Environment and Public Works

The Honorable Jeanne Shaheen, Ranking Member
U.S. Senate Committee on Small Business and Entrepreneurship

The Honorable Frank Pallone, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby Rush, Ranking Member
Subcommittee on Energy & Power

The Honorable Nydia Velázquez, Ranking Member
Committee on Small Business