COLORADO ASSOCIATION OF COMMERCE & INDUSTRY

Attn: Environmental Protection Agency,
EPA Docket Center (EPA/DC)
Docket ID No. OAR–2017-0355
Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

From: Colorado Association of Commerce & Industry (CACI), Energy & Environment Council

Date: January 11, 2018

Re: **Docket ID: EPA-HQ-OAR-2017-0355, Proposed Rule -** Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

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The Colorado Association of Commerce & Industry (CACI) – the State's Chamber of Commerce - represents hundreds of businesses across the state, as well as trade associations, economic development organizations, and local chambers of commerce. CACI has provided the below comments on behalf of the CACI Energy & Environment Council which represents energy and environmental interests statewide.

Background: The Colorado Association of Commerce and Industry ("CACI"), and its individual members, hereby submit these comments on EPA's above-referenced Rule Rescission Proposal of the so-called Clean Power Plan (CPP). CACI appreciates the opportunity to submit comments identifying our critical concerns with the Environmental Protection Agency (EPA)'s proposed use of Section 111(d) of the Clean Air Act (CAA) to regulate existing power plants in this manner. As CACI has previously argued and the Supreme Court apparently agreed, the CPP rule inappropriately and greatly expanded regulatory burdens and costs to both our electricity producers and consumers.

We believe the original CPP deserves to be reviewed by the EPA, rescinded and replaced with something that better reflects the concerted efforts of Colorado's businesses and manufacturers. CACI supports the EPA's efforts to reach a balance between regulatory efforts, predictability for businesses, as well as partnerships reflective of our state's public interests and our nation's energy producers.

Coloradans value our business spirit, stewardship of the land and our ability to turn ideas into benefits for the economy and our state. Given this understanding and pro-business environment, CACI believes the proposed CCP rule rescission would lift unnecessary costs and burdens for electricity providers and those Colorado businesses and consumers who rely on affordable energy. This is the first step to creating a framework for commonsense and more appropriate energy regulation that will also promote efficiency and reduced emissions.

CACI requests that the EPA consider the business community and energy providers' need for regulatory certainty, particularly flexibility for compliance standards that are practical and commonsense. We also ask that the EPA review the CPP through a lens that recognizes and uses clear guidelines to reflect a cooperative federalism structure, with deference to state authority, state expertise and state needs. In particular, CACI requests that EPA reevaluate the CPP's method for establishing Best System of Emission Reduction (BSER) and limit guidance for performance standards to actions that can reasonably take place within the fence-line of a regulated facility.

CACI does not believe the original CPP meets any of the above criteria and look forward to working with the Region 8 EPA Office and EPA headquarters to provide a business perspective to the EPA's rescission efforts and review of the Clean Power Plan.

Additional supporting arguments for CPP review:

The U.S. truly needs an "all-of-the-above" energy strategy to ensure we are responsibly developing energy sources while meeting consumer demands, protecting the environment and modernizing extraction and refining processes through market-led efficiencies. This means adopting policies that encourage development of all energy source options, without favoring one specific source over another.

The original CPP exceeds the EPA's CAA authority by applying performance standards on sources and sectors outside the "fence line" of the regulated unit. Under section 111(d) of the CAA, EPA's authority is limited to regulating emissions from existing sources within a specific source category (in this instance, fossil fuel-fired electric generating units or EGUs). Despite this clear statutory limitation, the original CPP reaches well beyond emission reductions at existing fossil-fueled EGUs and requires reductions from virtually the entire energy sector.

CACI agrees with the EPA's revised interpretation recognizing these limits to its authority. By redefining the CAA definition of "source," the CPP would have required a fundamental restructuring of the power sector and compelled States, utilities, and other power suppliers to redesign their electricity infrastructure to adopt EPA's preferred sources of power. The CPP's overreach is inconsistent with Congress's directive that states—not the EPA—should establish and implement "standards of performance" after taking into account the unique circumstances of local resources and communities. The original CPP would disregard this clear statutory requirement, and in doing so would have dismantled the longstanding model of cooperative federalism that has made the CAA an overall success.

The original CPP's reduction targets set for Colorado do not give our state credit for already promoting emissions reductions via legislation and dual-track rulemaking by its Air Quality Control Commission and Public Utilities Commission pursuant to the Clean Air, Clean Jobs Act. This puts Colorado at a competitive disadvantage, effectively punishing our state for doing lawfully at the state level what EPA improperly seeks to do unilaterally at the federal level.

From the business perspective, the original CPP proposal wrongly assumes businesses have not and are not taking opportunities to be more efficient, more cost-effective and therefore more competitive.

The CPP should be reviewed because the original CPP lacks authority to set binding state emission rate targets when such authority lies with the states. Under the Clean Air Act states, EPA's authority under 111(d) is clearly limited to "establishing procedures" by which states submit plans establishing standards of performance. The original CPP is unlawful because the Agency previously misinterpreted the unambiguous language in section 111(d) and hijacked the duty to establish standards of performance from the states. To remedy this, the CPP rescission and replacement rule must allow states the flexibility to establish their own performance standards based on the unique circumstances of their state, including efforts already made to increase energy efficiencies.

The original CPP's regulatory impact analysis of the proposed rules' cost is both deficient and unreliable. CACI believes the EPA's previous CPP economic analysis grossly *over*states and *over*estimates the benefits of the proposed rules, while at the same time *under*estimating the real-world burdens and translated costs on businesses and those they serve. A proper analysis of the original CPP would show significant short- and long-term **costs** and *not the benefits EPA had previously touted*. The original CPP's Regulatory Impact Analysis (RIA) is fundamentally flawed, and CACI believes, renders the CPP unlawful as implemented.

It was especially distressing to CACI and the business community that for the original CPP, an analysis to evaluate the proposed rule's impact on small businesses was not completed as <u>required</u>. Instead of conducting this analysis, the original CPP claimed the proposed rule "will not have a significant economic impact on a substantial number of small entities" because States, not EPA, are ultimately responsible for implementing Section 111(d). This claim is inaccurate because the impact on electricity prices and the potential regulation of entities beyond the legally defensible boundaries of existing Electrical Generating Units (EGUs) will undoubtedly impact small businesses. We want to reiterate that electricity costs are a significant concern for many small businesses and energy costs are a top-three business expense for 35% of all small businesses.

In addition, the original CPP's calculations failed to use full-employment modeling, skewing numbers and projections for the proposed rule. Specifically, the CPP failed to consider or account for the existing power plant rules' negative impact on employment within the industry or by industries which support and/or rely on coal-produced energy among the greater business community. For these reasons, CACI would request that the EPA rescind the original CPP.

In closing: As the voice of business and as Colorado's State Chamber of Commerce, CACI believes the previous EPA lacked legal authority under the Clean Air Act to implement the original Clean Power Plan as proposed and promulgated. It is the role of Congress to construct and create laws, and the role of the EPA to implement – and this was not the case for the original CPP. CACI supports EPA's current efforts to withdraw the CPP, plus requests the EPA work with the business community to prepare a regulatory flexibility analysis before proceeding with a new regulatory proposal for existing EGU stationary source emissions.

CACI further requests that as the EPA proceeds with a replacement regulatory proposal, it consider the business community and energy providers' need for regulatory certainty, particularly flexibility for compliance standards that are practical and commonsense. We also ask that the EPA review the CPP through a lens that recognizes and uses clear guidelines to reflect a cooperative federalism structure, with deference to state authority, state expertise and state needs. In particular, CACI requests that EPA reevaluate the CPP's method for establishing Best System of Emission Reduction (BSER) and limit future guidance for performance standards to actions that can reasonably take place within the fence-line of a regulated facility.

Thank you in advance for your consideration of the above comments and questions by CACI and our individual business members. CACI looks forward to working with the Region 8 EPA Office and EPA headquarters to provide our business perspective. If you have any questions or require additional information concerning these comments, please contact John Jacus, CACI Energy & Environment Council Chair or Leah Curtsinger, CACI Federal Policy Director.