August 7, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Lisa Thompson
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
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Re: Prime Mover Institute's Comment on the Proposed Rule Entitled: Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25,752 [EPA-HQ-OAR-2025-0124; FRL-12674-01-OAR] (Jun. 17, 2025)

Dear Administrator Zeldin and Ms. Thompson:

The Prime Mover Institute provides these comments in support of EPA's proposals to repeal the Biden Administration's Carbon Pollution Standards (CPS). Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25,752 (Jun. 17, 2025) (Proposed Rule); *see also* New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39,798 (May 9, 2024) (CPS).

The Prime Mover Institute is a new public interest organization dedicated to advancing energy dominance in America. We work with coalition partners to engage in rulemaking processes with technical information and legal arguments, calling attention to the impacts regulation has on citizens, the grid, and the rule of law.

America stands at a crossroads. A legacy of bad policy and worse ideas threatens the nation with blackouts and bill hikes, right as demand for energy rises. In order for America to scale up its energy production and avoid the worst-case scenarios, we cannot cling to the policies and procedures that got us here. Fortunately, both policymakers and the private sector realize the need for dramatic change. And courts have begun to look more skeptically at accretions of arbitrary power, accretions that government officials used to thwart energy production and use. This points the way to a future of streamlined regulation, taxpayer savings, and cheaper, more abundant energy for all.

The main obstacle to energy dominance is what Robert Bryce calls the "anti-industry industry," the non-profits and lawyers dedicated to defending the status quo. These groups have used litigation, regulatory comments, and intimidation to forestall change. They will no doubt keep at it. But, despite their vast funding, they will not be able to maintain a policy regime that's so far out of touch with the American public and their elected representatives. So long, that is, that the advocates of energy dominance show up to defend their ideas.

In the words of Vaclav Smil, "prime movers are energy converters able to produce kinetic (mechanical) energy in forms suitable for human uses." In the same way, Prime Mover Institute helps convert insight into action.

Thank you for the opportunity to comment. Prime Mover Institute is pleased to support the Proposed Rule, and Prime Mover Institute urges EPA to finalize both the Primary Proposal and Alternative Proposal as independent, severable actions as further laid out below.

Respectfully submitted,

/Russell Greene/
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Background

In the Proposed Rule, EPA seeks to repeal the Biden-Era Clean Power Standards, which echoed and augmented the Obama administration's overreach to directly killing coal and neutering natural gas. The proposed repeal returns EPA to the bounds of its statutory authority under the Clean Air Act (CAA), recent Supreme Court decisions, and technical and economic realities facing the U.S. power sector. In other words, it is a return to law and order in Constitutional governance. The Agency proposes to fix Biden's EPA problems by: (1) concluding that greenhouse gas (GHG) emissions from fossil fuel-fired power plants do not contribute significantly to dangerous air pollution within the meaning of the CAA; and (2) finding that CPS relied on inadequately demonstrated technologies, imposed unreasonable costs, and threatened grid reliability and energy affordability.

EPA can only regulate fossil fuel-fired electric generating units (EGUs)—power plants—because Congress gave it authority in the Clean Air Act to regulate stationary sources of pollutants. Stationary sources are regulated under Section 111. That Section of the CAA authorizes EPA to establish standards of performance for new stationary sources, § 111(b), and emission guidelines for existing sources, § 111(d), but only under specific conditions and procedural requirements.

Before EPA can regulate a stationary source, EPA needs to make certain findings. Under Section 111(b)(1)(A), the EPA Administrator is required to publish a list of categories of stationary sources that, in the Administrator's judgment, "cause[], or contribute[] *significantly* to, air pollution which may reasonably be anticipated to endanger public health or welfare." (emphasis added). Notably, the Section 111 stationary-source finding uses the word "significantly," while the mobile source under Section 202 does not, implying that the Section 111 standard is higher.

The EPA under both the Biden and Obama administrations ignored that this Section 111 finding is **pollutant-specific and source-specific**. Congress provided this guardrail to ensure that regulatory action is justified by evidence that the emissions in question have a significant impact on public health or welfare. Only after making this pollutant- and source-specific "significant contribution" finding may the EPA impose costly regulations through new source performance standards (NSPS) for those pollutants and for those categories. Then, based on those new-source standards, EPA can also promulgate standards for existing EGUs, but with several protections left up to the States that recognize America needs its power fleet. These protections are often called RULOF protections—an acronym that means EPA and States can consider the remaining useful life of a power plant before imposing an environmental standard that may shutter it.

Beyond making the significant contribution findings, EPA has several considerations it must address and get mostly right—*i.e.*, not arbitrary and capricious under the Administrative Procedure Act—when it sets the standard:

- **Best System of Emission Reduction (BSER):** Any standard of performance promulgated under Section 111 must reflect the "degree of emission limitation achievable through the application of the best system of emission reduction which (taking into

account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." 42 U.S.C. § 7411(a)(1). This statutory language requires that the EPA's chosen control technologies be technically feasible, adequately demonstrated in the real world, economically reasonable, and available for implementation within the relevant compliance timeframe.

- **Federalism and State Primacy:** The CAA recognizes the primary responsibility of states and local governments in preventing and controlling air pollution at its source. Section 111(d) in particular embodies a cooperative federalism approach, giving States the lead role in developing and implementing plans for existing sources, subject to EPA's emission guidelines.

- **Limits on Agency Authority:** The Supreme Court has repeatedly underscored that the EPA's authority under Section 111 is not open-ended. In *West Virginia v. EPA*, the Court held that the EPA may not use Section 111 to effectuate sweeping, sector-wide transformations—such as generation shifting from coal to natural gas or renewables because that statute lacks clear congressional authorization to do so. 597 U.S. 697, 735 (2022) The Court emphasized that major questions of economic and political significance require explicit statutory direction, and that agencies must adhere closely to the text and structure of their enabling statutes. *Id.* at 721.

In May 2024, the EPA promulgated the Carbon Pollution Standards, which repealed the ACE Rule and established new GHG emission guidelines for existing fossil fuel-fired steam generating units. CPS, 89 Fed. Reg. 39,798. The CPS was challenged on multiple grounds, including the feasibility and achievability of CCS, infrastructure requirements required to achieve CCS, unreasonable costs, that 40% co-firing of natural gas represents generation-shifting, and other grounds. This litigation was fully briefed before the D.C. Circuit, and oral argument was held on Dec. 6, 2024. The litigation is currently held in abeyance. *West Virginia v. EPA*, No. 24-1120 (D.C. Cir. Apr. 25, 2025).

On June 17, 2025, EPA proposed to repeal all GHG regulations for fossil fuel-fired EGUs. In the proposed rule, EPA proposes two primary alternatives:

> **Primary Proposal:** Repeal all GHG standards for fossil fuel-fired power plants based on Section 111(b)(1)(A) of the CAA, finding that GHG emissions from these sources do not "contribute significantly" to dangerous air pollution.
>
> **Alternative Proposal:** Repeal specific portions of the existing Carbon Pollution Standards, particularly those relying on carbon capture and sequestration (CCS) and natural gas co-firing, on the grounds that these requirements are not adequately demonstrated, not achievable, or not cost reasonable.

Summary of Argument

Prime Mover Institute supports EPA's Proposed Rule, which would repeal the Biden EPA's Carbon Pollution Standards. In short, the CAA does not grant EPA the authority to regulate GHGs from the U.S. power sector.

The statute requires a pollutant- and source-specific finding that emissions "contribute significantly" to dangerous air pollution before regulation can begin, and EPA has never properly made that finding for GHGs from power plants. And, even the complete elimination of U.S. power sector emissions would have an almost imperceptible effect on global temperatures—far too small to be called "significant" under the statute.

Supreme Court precedent underscores the point. Under the Major Questions Doctrine, agencies need clear congressional authorization to impose rules of vast economic and political significance. *West Virginia v. EPA* makes plain that Section 111 cannot be used to transform the power sector or force generation shifting absent explicit direction from Congress. Nothing in Section 111 provides a mandate for global climate regulation, and stretching the provision to reach GHGs departs from the text and structure of the Act.

Nor does Section 115 fill the gap. It is the CAA's only provision tailored to international air pollution, and it is tied to the regulatory framework for conventional pollutants. That framework is designed for local, controllable pollutants and is unworkable for globally mixed GHGs. Without an underlying National Ambient Air Quality Standard and State Implementation Plan that could actually influence in-state concentrations, Section 115 cannot function. In short, the CAA's international mechanism does not supply authority to run a nationwide GHG program.

Even if Section 111 granted EPA the authority to regulate GHGs, the CPS far exceeds EPA's statutory authority. The CPS's standards rely on control measures—such as carbon capture and storage—that are not adequately demonstrated, are not achievable within the relevant timeframes, and would impose unreasonable costs.

The grid consequences are serious. The CPS would elevate blackout risks and drive large, avoidable costs nationwide. An expert analysis discussed in Section 4 shows that repeal would protect system reliability and could avoid more than $560 billion in costs in MISO alone. This analysis reflects updated demand forecasts, real-world reliability needs, and a resource mix that preserves dependable, dispatchable power.

Prime Mover Institute urges EPA to finalize both the Primary Proposal and Alternative Proposal as independent, severable final actions. This would fully repeal all GHG-related standards for the U.S. power sector and restore a lawful, limited approach that respects EPA's statutory authority, or, in the alternative, rescind the most burdensome elements of the CPS—especially mandates premised on CCS. Ultimately, any comprehensive national response to climate change requires new legislation from Congress, not an administrative end-run through Section 111.

EPA Should Fully Repeal the Carbon Pollution Standards

1. Prime Mover Supports EPA's Primary Proposal.

Prime Mover Institute applauds EPA for taking the bold and necessary step of proposing the CPS and finding—once and for all—that the Agency lacks the authority to regulate greenhouse gas emissions from the U.S. power sector. The significance of this deregulatory step cannot be overstated, especially at a time when abundant energy is so desperately needed to fuel the great American comeback and American dominance in artificial intelligence.

1.1. Section 111 requires EPA to make a source- and pollutant-specific finding before regulating.

In the early 1970s, the EPA listed fossil fuel-fired steam generators (1971) and combustion turbines (1979) as source categories under CAA Section 111(b)(1)(A).[1] These listings were based on their emissions of non-GHG pollutants such as sulfur dioxide (SO_2), nitrogen oxides (NO_x), and particulate matter. NSPS were established for these pollutants, but GHGs were not listed or regulated at that time.

The Obama and Biden administrations fundamentally misread Section 111 of the Clean Air Act, wrongly claiming EPA can regulate any emission from power plants simply because those plants emit some other dangerous pollutant. 2015 NSPS, 80 Fed. Reg. at 64,529–31. This interpretation contradicts the statute's text, structure, and constitutional limits, and Prime Mover applauds EPA for correcting this error here.

Section 111 requires that EPA, before issuing regulations, must find that a source category "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 111(b)(1)(A). Once a category has been listed, EPA is required to issue "standards of performance" for new sources within that source category, *id.* § 111(b)(1)(B), which is defined as a standard for emissions of "air pollutants," *id.* § 111(a)(1).

EPA correctly points out that, taking these provisions together, "CAA section 111 directs the EPA to establish standards for *air pollutants* that significantly contribute to dangerous air pollution." Proposed Rule, 90 Fed. Reg. at 25,763 (emphasis added). If, after listing a source, EPA could regulate any pollutant from that source without making a pollutant-specific finding, this would lead to absurd results: EPA could regulate any emission from such sources, no matter how

[1] Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971, 36 Fed. Reg. 24,875 (Dec. 23, 1971); Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, 44 Fed Reg. 33,580 (June 11, 1979); *see also* Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510, 64,529–31 (Oct. 23, 2015) (2015 NSPS) (Obama-era EPA describing the regulatory history of Section 111 listings when finalizing the 2015 new source performance standards for coal- and gas-fired EGUs).

harmless. This is, incidentally, precisely the argument made by the Obama Administration when issuing the Clean Power Plan. 2015 NSPS, 80 Fed. Reg. at 64,530 ("[O]nce a source category is listed, the CAA does not specify what pollutants should be the subject of standards from that source category.") (relying in part on *Chevron U.S.A. v. NRDC*, 467 U.S. 837, 843-44 (1984)).

EPA is right to correct course and return EPA's regulatory practice to the confines of the statute.

1.2. EPA Should Consider a Concentration-Based Approach for Determining "Significance" Under Section 111(b)(1)(A) in its Primary Proposal.

To assess whether GHG emissions from the U.S. power sector contribute significantly to endangering air pollution, as required by § 111(b)(1)(A), EPA has several options for making this determination. In the Proposed Rule, EPA proposes to determine that in 2022, the GHG emissions from the U.S. power sector represented less than 3% of global anthropogenic emissions for that year. Proposed Rule, 90 Fed. Reg. at 25,767–68. This comparison of the U.S. power sector to global emissions is wholly appropriate, given that climate change is a global phenomenon and that GHGs accumulate and mix in the atmosphere from all global sources.

Another option, which shows that the U.S. power sector's contribution to dangerous air pollution is far less, would be to consider U.S. EGUs' contribution to global CO_2 concentrations over time. The key question is not necessarily how much is emitted in a single year, but how those emissions change future CO_2 levels and, in turn, the potential negative impacts associated with those levels.

EPA could use models like the United Nations' MAGICC (Model for the Assessment of Greenhouse Gas Induced Climate Change) to estimate the effect of U.S. EGU emissions on global greenhouse gas concentrations. To estimate this impact, consider a scenario where all GHG emissions from the U.S. power sector are eliminated in 2030. In 2050, this would reduce global CO_2 concentrations by less than 0.68%. *See* Brent Bennett, *The Materiality of U.S. CO_2 Emissions on Global Climate, Texas Public Policy Foundation* (Jun. 2025), tbl. 3, https://bit.ly/4lew9Ar. The MAGICC model shows that eliminating U.S. power sector GHG emissions starting in 2030 would be even smaller in 2030 and 2040—just 0.16% and 0.45%, respectively. *Id.*

No matter how one defines "significantly" under Section 111 for CO_2 regulation, it is not reasonable to say that such a tiny share of global emissions "contributes significantly" to global climate change and CO_2 concentrations.

Id. The minimal impact of U.S. power plant emissions becomes even clearer when one looks at projected changes in global surface temperatures. According to the MAGICC model, reducing all U.S. power plant emissions would lower global temperatures by just 0.002°C in 2030, 0.009°C in 2040, and 0.015°C in 2050. *Id.* The following chart shows that even if every coal- and oil-fired power plant in the U.S. were shut down, the effect on global climate would be negligible.

	Net zero CO_2 emissions by 2030	CO_2 concentration (ppm)	Percentage difference	Temperature difference (°C) relative to the 19th century baseline	Temperature difference (°C) relative to SSP2-4.5
2030	SSP2-4.5	440.9		1.435	
	No U.S. Electricity	440.2	0.16%	1.432	0.002
	No U.S. Emissions	438.4	0.55%	1.427	0.008
2040	SSP2-4.5	469.9		1.694	
	No U.S. Electricity	467.8	0.45%	1.685	0.009
	No U.S. Emissions	462.8	1.52%	1.664	0.030
2050	SSP2-4.5	498.8		1.948	
	No U.S. Electricity	495.4	0.68%	1.933	0.015
	No U.S. Emissions	487.4	2.29%	1.896	0.052

Note: Modeling results derived from *Model for the Assessment of Greenhouse Gas Induced Climate Change*, Climate Resource, 2021 (https://live.magicc.org).

There are two important points to add. First, the MAGICC model assumes "feedback mechanisms" that more than double the direct warming effect of CO_2. *Id.* at 4. This means the model is already set up to amplify the projected impact of CO_2, yet the effect of U.S. EGUs is still barely noticeable.

Second, the margin of error and year-to-year variation in the average global surface temperature is about ±0.1°C. *Id.* at 4 (citing C.P. Morice et al., *An Updated Assessment of Near-Surface Temperature Change from 1850: The HadCRUT5 Data Set*, JOURNAL OF GEOPHYSICAL RESEARCH: ATMOSPHERES, vol. 126, iss. 3 (Dec. 15, 2020)). The projected temperature change from eliminating U.S. EGU emissions—0.015°C—is only about 15% of that margin of error. In other words, the impact is so small it cannot be reliably measured in the real world. *Id.* For a source of CO_2 emissions to be considered "significant," its impact must at least be larger than the measurement error and natural annual variation in global temperature. *Id.*

This analysis could give EPA a solid foundation to show just how minor the effect of U.S. EGU emissions is on global CO_2 concentrations and global temperatures both in the immediate term and long term. EPA should consider utilizing such options in the final rule.

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In short, this leads to the conclusion that Congress did not grant EPA the authority to regulate GHG emission from the U.S. power sector under Section 111 of the CAA. EPA is right to reassess its authority, and Prime Mover strongly supports EPA's Primary Proposal.

2. Congress Authorized EPA to Regulate International Air Pollutants Under Section 115 (and Section 115 Doesn't Work for GHGs).

It should be entirely unsurprising that regulating greenhouse gas emissions under Section 111 doesn't work. Congress simply didn't intend to give EPA authority to regulate global emissions like GHGs—gases that are emitted from every country on earth, well-mixed in the atmosphere, and accumulate over decades—through Section 111. So the mechanisms to properly regulate GHGs didn't end up in the text. Congress did, however, give EPA authority to regulate international air pollution in a different part of the Clean Air Act: Section 115. Section 115 *also* doesn't work for regulating greenhouse gas emissions in a comprehensive global scheme.

So Courts should add this to the heap of reasons why the Biden EPA was wrong to promulgate CPS and why any future attempt will also fail. The Clean Air Act as written isn't the tool for the job. Congress has acted before to address global pollutant crises and added new authority under Title VI.[2] If EPA wants to address greenhouse gases under a global regulatory regime, it will need similar new authority. If EPA wishes to regulate international pollutants, Section 115 is the only authority the Agency has.

2.1. Section 115 is the authority Congress granted EPA to regulate international air pollution.

The Clean Air Act is almost entirely a domestic animal. From the get-go, the Congressional findings focus on "the predominant part of the Nation's population" and how it "is located in its rapidly expanding metropolitan and other urban areas." 42 U.S.C. § 7401(a)(1). Really, the Act is so local it self-consciously hews closely to its constitutionally permitted Commerce Power authority. The Act also calls out to possible "injury to agricultural crops and livestock" to situate itself within the confines of *Wickard v. Filburn*, 317 U.S. 111 (1942) and avoid claims that it is exercising too much police power typically reserved to the States. *See* 42 U.S.C. § 7401(a)(2). Conscious of that local power, it still recognizes that "air pollution prevention . . . and air pollution control at its source is the primary responsibility of States and local governments," not international bodies, let alone a national agency. *See id.* § 7401(a)(3).

The local and domestic nature of these Congressional findings are borne out in the mechanisms of power delegated to the EPA by Congress. Congress ensured actual implementation would be handled by the State, "which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State." *Id.* § 7407(a). That's how States end up with implementation plans under Section 110, to implement the standards created elsewhere in the Act. *See generally id.* § 7410.

Even the Sections providing the standards are entirely domestic-focused. For example, Section 111 when discussing the Administrator setting standards is focused on "establishing Federal standards of performance for new sources." *Id.* § 7411(b)(1)(B). And once the standard for new

[2] 42 U.S.C. §§ 7671 *et seq.* (relating to Stratospheric Ozone Protection).

sources comes in, and existing sources are considered, Section 111 becomes even more local by committing to the States RULOF protections for their existing fleet. *Id.* § 7411(d). And in Section 112, which deals with hazardous air pollutants, Congress carved out a program for global environmental harm. *See id.* § 7412(b)(2) ("No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment."). Across these sections, there is zero hint that Congress has granted authority to implement standards of emissions for international air pollution. That would be an "extravagant statutory power over the national economy . . . that the authority claimed would render the statute unrecognizable to the Congress that designed it." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (quotes omitted); *see also West Virginia,* 597 U.S. at 722 (describing *UARG* as rejecting EPA's position "[d]espite its textual plausibility" because it would have given the agency "unheralded" regulatory power over "a significant portion of the American economy.").

But Congress hasn't hid the ball; it has been clear to EPA what authority it *does* have to regulate international air pollution. Entitled "International Air Pollution," Section 115 addresses "any air pollutant or pollutants emitted in the United States [that] cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a in a foreign country . . . ." 42 U.S.C. § 7415(a). The authority is limited to when a "duly constituted international agency" or the Secretary of State provides reports, surveys, or studies regarding alleged air pollution arising in the United States and impacting a foreign country. *Id.* Only then can EPA act.

And EPA's action is limited. Its authority is merely to issue a formal notification to the Governor of the State in which the emissions originate. *Id.* § 7415(a). This notification operates as a call for the State in question to revise its State Implementation Plan (SIP) to address the international pollution issue. *Id.* § 7415(b). And Section 115 only applies when the affected country provides "essentially the same rights" to the United States. *Id.* § 7415(c).

The authority is narrow, to be sure, but nowhere else in the main Clean Air Act scheme does Congress address international air pollution. "Indeed, the statutory scheme is silent about extraterritorial reach, except to authorize the EPA Administrator to mitigate domestic air pollutants that have caused or contributed to air pollution in a foreign country—and even then, only if that country provides reciprocal protections to the United States." *See City of New York v. Chevron Corp.*, 993 F.3d 81, 100 (2nd Cir. 2021) (citing 42 U.S.C. § 7415). The specificity throughout Section 115 that it is the provision that addresses international air pollution is strong evidence that this is *the* provision for addressing pollution that crosses borders—not Section 111.

Post-enactment practice confirms text. On the heels of the 1977 Clean Air Act Amendments that created Section 115, Indiana submitted its state implementation plan for sulfur dioxide National Ambient Air Quality Standards (NAAQS). Approval and Promulgation of Implementation Plans; Indiana, 47 Fed. Reg. 10813-01 (Mar. 12, 1982). "The Province of Ontario, Canada, claimed that emissions from IPALCO's Stout and NIPSCO's Michigan City plants and other sources in the Great Lakes region adversely affect air quality in southern Ontario in contravention of Section 115 of the Clean Air Act[.]" Approval and Promulgation of Implementation Plans; Indiana, 47 Fed.

Reg. at 10821. EPA responded that "Absent formal notification [from the Secretary of State or international agency], however, Section 115 does not require EPA to consider transboundary air pollution in approving a SIP revision." *Id.* But turning to the substance, EPA also responded that "Ontario bases its claim of injury from transboundary air pollution upon the cumulative impacts of total SO_2 emissions from the midwestern and northeastern U.S., and not solely upon emissions from the Indiana plants that are subject of this rulemaking." *Id.* That also made it a poor fit for Section 115. Section 115 is a procedurally bound rule about who can participate in state implementation plan revisions.

The one circuit to later grapple with the provision confirms this as well. "The Province of Ontario and a number of States and environmental groups [] petitioned the EPA for a rulemaking that would essentially set in motion section 115's international pollution abatement procedures." *Her Majesty the Queen in Right of Ontario v. E.P.A.*, 912 F.2d 1525, 1527 (D.C. Cir. 1990). The D.C. Circuit recognized the remedy was narrow: "section 115(b), [] mandates a revision of the polluting State's SIP," *id.* at 1533, nothing more. There is no congressional authorization or mandate to issue different NAAQS.

2.2. Congress implemented Section 115 to deal with transnational air pollution—not global climate change.

At first, Section 115 seems like the prime candidate to regulate global emissions of greenhouse gases. But Section 115 still doesn't work for several reasons—leading to the conclusion that Congress has simply not authorized EPA to regulate GHG emissions.

Section 115 only authorizes EPA to regulate air pollutants addressable through NAAQS. Section 115's text and structure demonstrate that it applies exclusively to conventional criteria pollutants like ozone precursors, particulate matter, and carbon monoxide—not GHGs. EPA correctly observed that "Section 115 could not be used to require states to incorporate into their [State Implementation Plan] measures unrelated to attainment or maintenance of a [National Ambient Air Quality Standard]." Regulating Greenhouse Gas Emissions under the Clean Air Act, 73 Fed. Reg. 44,354, 44,483 (July 30, 2008).

This limitation on EPA's authority derives from the structure of Section 115. Although subsection (a) appears to apply broadly to "any air pollutant or pollutants," this phrase must be read in the context of the structure of the section itself. Once EPA has made the two necessary findings laid out above, EPA is directed to "give formal notification [] to the Governor of the State in which emissions originate." 42 U.S.C. § 7415(a). In subsection (b), Congress provides that this notice shall be deemed a "finding under section 7410(a)(2)(H)(ii) . . . which requires a plan revision." *Id.* § 7415(b).

Section 7410(a)(2)(H)(ii) requires states to revise their SIPs when the EPA Administrator finds that a plan is "substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements established under this chapter." This statutory mechanism depends on the existence of an underlying SIP for the pollutant at issue.

Without a pre-existing NAAQS and corresponding SIP for a particular pollutant, Section 115(b) makes no sense. No NAAQS means no SIP. No SIP means there is nothing to revise.

This structural relationship confirms that Section 115 was designed solely for criteria pollutants subject to NAAQS, as it can only function when there is an underlying SIP for the State in question to revise.

The question then arises, could EPA issue a National Ambient Air Quality Standard for GHGs?

The NAAQS regime is fundamentally designed for local pollutants that can be meaningfully controlled through state-level regulation, making it structurally incompatible for regulating GHGs. GHGs are globally dispersed throughout the atmosphere, meaning no SIP could have any measurable effect on GHG concentrations within state borders. Section 109 of the CAA authorizes EPA to establish health-based ambient air quality standards, and states must develop implementation plans (SIPs) to meet these standards within their borders. 42 U.S.C. § 7409. Areas failing to meet these standards are designated as "nonattainment areas" and face statutory deadlines—generally 5–10 years—to come into compliance through state-level controls. *See id.* § 7410(a)(2). Persistent nonattainment triggers significant consequences, including highway fund sanctions, stricter permitting requirements for new sources, and the possibility of federal implementation plans. *See, e.g.*, *id.* § 7410(c).

Establishing a NAAQS for GHGs would result in perpetual nationwide nonattainment, as states would be unable to demonstrate progress toward meeting standards through their own regulatory actions. Even if a state eliminated all its GHG emissions—a practical impossibility—global atmospheric concentrations would remain virtually unchanged due to contributions from international sources and the long atmospheric lifetime of GHGs.

As a result, the statutory deadlines, penalties, and incentives built into the NAAQS program—including the requirement that states achieve attainment by specific dates—would be rendered meaningless in the face of a pollutant that no single state or even the entire United States could effectively control on its own.

The futility of a GHG NAAQS is further demonstrated by other statutory features that would be rendered nonsensical. States would be required to establish air quality monitoring devices that would serve no useful purpose for a uniformly distributed global pollutant. Similarly, the CAA's provisions for interstate transport, "good neighbor" requirements, and "exceptional events" demonstrations were designed for pollutants with localized impacts and could not function for GHGs.

This mismatch between the NAAQS framework and the nature of GHGs led EPA to conclude that "Congress [did not intend] to legislate a meaningless exercise." Letter from Andrew Wheeler, EPA Administrator, to Kassie Siegel et al., (Jan. 19, 2021) (letter denying four petitions for rulemaking, including a petition for rulemaking to regulate GHGs under Section 115) (citing

Jackson v. The Archimedes, 275 U.S. 463, 468 (1928) ("[A] purpose so wholly futile is not to be attributed to Congress.")), *available at* https://bit.ly/4lj1vGe.

Section 115 only authorizes EPA to revise already existing regulations—not create new ones. In short, the mechanics don't work for GHGs. Once the statute is triggered by "reports, surveys, or studies from any duly constituted international agency" or a "Secretary of State request[]," the provision becomes far more local than international. *See* 42 U.S.C. § 7415(a). When triggered, the agency then "give[s] formal notification [] to the Governor of the State in which emissions originate." *Id.* From there, that notice is "deemed to be a finding under section 4710(a)(2)(H)(ii)" that "requires a plan revision" to already existing "implementation plan" for preexisting NAAQS. *See id.* § 7410; *see also Michigan v. U.S. E.P.A.*, 213 F.3d 663, 671 (D.C. Cir. 2000) ("Section 115 pertains to petitions made by foreign countries."). Section 115 itself does not provide a basis for setting any new emission limits that don't already exist. *See generally id.* § 7415. It just provides a seat at the table—an "invit[ation]to appear at any public hearing associated with any revision"—to the affected foreign country. *Id.* § 7415(b).

Subsection 115(c) has a reciprocity requirement. "This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section." *Id.* § 7415(c). Any foreign country EPA considers in its analysis for GHGs would need to have given the same rights to the United States. This provision ensures that American regulatory actions addressing transboundary pollution are matched by comparable commitments from foreign nations.

The reciprocity requirement contains both procedural and substantive elements. Procedurally, foreign countries must provide the United States with notification and participation rights similar to those Section 115 extends to them. Substantively, these nations must demonstrate a willingness and capacity to take meaningful regulatory action in response to U.S. concerns about pollution originating within their borders. This two-pronged approach ensures that international cooperation on air pollution control remains balanced and mutually beneficial rather than unilateral.

Congress deliberately included this reciprocity provision to prevent economic disadvantage to the United States. It makes sense why. This reciprocity requirement prevents unilateral economic disarmament, where American industries bear the full economic burden of pollution control while competing against foreign counterparts operating without similar constraints. Without this safeguard, regulation under Section 115 would force domestic industries to implement costly emission controls while their international competitors remain unregulated, creating market distortions and driving carbon-intensive industries overseas. (Perhaps this sounds familiar?)

Given the global nature of GHG emissions, reciprocity would need to be established with all other nations simultaneously to satisfy the reciprocity requirement in Section 115(c). Absent comprehensive, global reciprocity, Section 115 regulation of GHGs would impose domestic costs

without corresponding environmental benefits, as production and emissions simply shift to unregulated jurisdictions.

• • •

Even Section 115, the most obvious candidate for international pollution like GHGs, fares no better than Section 111 as a textual toehold for addressing climate change.

2.3. The President and Congress must authorize EPA to regulate GHGs before EPA can act.

Early on some scientists sounded an alarm. Our great inventions had brought significant progress and convenience to modern life, but at what cost? Industry rejected the alarm. Those who created the miracle of modernity called the early studies science fiction, a load of rubbish, and utter nonsense. The stuff, after all, was not toxic. It was in our homes. Besides, they had some studies of their own that showed the problem was exaggerated. And what were we going to do? Give up our refrigerators?

President Ronald Reagan had a solution after all. Our refrigerators were filled with Freon—DuPont's miracle chlorofluorocarbon, CFC for short—and other products had similar substances. Those CFCs, once exposed to ultraviolet light in Earth's atmosphere, broke down producing chlorine, which in turn sheared a hole in our home's ozone layer. The ozone layer is why all of us do not get sizzled to a crisp, blasted with skin cancer, and have our genomes mutated from the Sun's ultraviolet light on immediate exposure. It was a global catastrophe in the making ultimately adverted not by the will of one man and a bunch of bureaucrats but by the transnational cooperation and congressional action.

Congress ratified the Montreal Protocol in 1987 under Reagan's leadership. Reagan listened to the scientific consensus that CFCs in refrigerators, hair spray, and industrial applications were—through their byproducts—depleting the ozone layer. After much international deliberation on frameworks, the United States led the way and helped settle the approach. "On behalf of the U.S., EPA Administrator Lee Thomas [] signed an international protocol aimed at protecting the stratospheric ozone layer by limiting the future world-wide emissions of chlorofluorocarbons (CFCs) and halons."[3] Reagan presented the protocol to the Senate and urged that "[e]arly ratification by the United States will encourage similar action by other nations whose participation is also essential."[4]

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[3] Foreign Relations of the United States, 1981–1988, Volume XLI, Global Issues II, *375. Memorandum From the Cabinet Secretary (Risque) to President Reagan*, https://history.state.gov/historicaldocuments/frus1981-88v41/d375.
[4] The White House, *Message to the Senate Transmitting the Montreal Protocol on Ozone-Depleting Substances*, https://www.reaganlibrary.gov/archives/speech/message-senate-transmitting-montreal-protocol-ozone-depleting-substances.

The Senate listened to the President and unanimously ratified the protocol. President Reagan signed the ratification, noting "[t]he protocol marks an important milestone for the future quality of the global environment and for the health and well-being of all peoples of the world."[5] Reagan boasted of the protocol's "wisdom": "It provides for internationally coordinated control of ozone-depleting substances in order to protect a vital global resource. It requires countries that are parties to reduce production and consumption of major ozone-depleting chemicals by 50 percent by 1999. It creates incentives for new technologies—chemical producers are already working to develop and market safer substitutes—and establishes an ongoing process for review of new scientific data and of technical and economic developments. *Id.*

But the Senate didn't end there. Joined by the House, the Senate amended the Clean Air Act with the 1990 Amendments that implemented the U.S. international responsibilities under the Montreal Protocol with domestic enforcement and empowering the EPA to regulate the ozone-depleting substances. *See* 104 Stat. 2648–72.

And it worked.[6] All member nations of the United Nations have signed the Protocols. Ozone-depleting substances have been greatly reduced. The Ozone hole was mended and the layer was recovering.[7]

It worked so well that in 2022, the Senate ratified the Kigali Amendment to the Montreal Protocols to tackle hydrofluorocarbons that presented similar problems as CFCs.[8] Notably, the treaty was not self-executing, meaning it does not have the force of domestic law.[9] *See Medellin v. Texas*, 552 U.S. 491, 526 (2008) ("[T]he terms of a non-self-executing treaty can become domestic law only in the same way as any other law—through passage of legislation by both Houses of Congress, combined with either the President's signature or a congressional override of a Presidential veto. See Art. I, § 7.").

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[5] The White House, *Statement on Signing the Montreal Protocol on Ozone-Depleting Substances,* https://www.reaganlibrary.gov/archives/speech/statement-signing-montreal-protocol-ozone-depleting-substances.

[6] Well, it sort of worked. Like even the most successful government—especially international—interventions, it turns out to be a mixed bag. *See, e.g.*, James Temple, *How Scientists Unraveled the Mystery Behind the Return of a Banned Greenhouse Gas*, MIT Technology Review (May 22, 2019), https://www.technologyreview.com/2019/05/22/135243/how-scientists-unraveled-the-mystery-behind-the-return-of-a-banned-greenhouse-gas/.

[7] National Oceanic and Atmospheric Administration, *Montreal Protocol emerges as a powerful climate treaty*, https://www.noaa.gov/news-release/montreal-protocol-emerges-as-powerful-climate-treaty.

[8] United States Senate, Roll Call Vote 117th Congress, Second Session, *On the Resolution of Ratifcation of Tread Doc No. 117-1, the Kigali Amendment to the Montreal Protocol*, https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00343.htm.

[9] Senate Consideration of Treaty Document 117-1, https://www.congress.gov/treaty-document/117th-congress/1/resolution-text

While all this was happening, Congress recognized a new mounting problem. Congress found: "There exists evidence that manmade pollution . . . may be producing a long-term substantial increase in the average temperature on Earth, a phenomenon known as global warming through the greenhouse effect." 101 Stat. 1408. But when Congress amended the Clean Air Act in 1990 to address CFCs for ozone issues in Subchapter VI, Congress left greenhouse gases alone. This is further evidence that the Clean Air Act as it exists today does not address global emissions of greenhouse gases. So, we should be skeptical of any expansion of executive power to implement wide ranging regulations—such as mandating a national pipeline network—to tackle the issue. *See, e.g.*, *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021) ("Congress was on notice that a further extension would almost surely require new legislation, yet it failed to act in the several weeks leading up to the moratorium's expiration."); *United States Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 622 (2020) ("Congress not only failed to enact similar language in the Trails Act, but it clearly expressed the opposite view.").

We were not saved from killer refrigerators by an energetic executive unmoored from the statutory delegated power from the people's representatives in Congress. We were saved by international cooperation, United States leadership from President Reagan, congressional ratification of a treaty, and—most significantly—new legislation that went through both chambers of Congress, was presented to the President, and was signed into law. A quaint concept to an Agency that in recent years was wont to "claim to discover in a long-extant statute an unheralded power" representing a "transformative expansion in [its] regulatory authority," to be sure. *West Virginia*, 597 U.S. at 724 (quoting *Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 324 (2014)).

But that is how our Government is supposed to solve problems—not because anthropomorphic scrolls of paper sitting on Capitol Hill say so—because the Constitution commands and constrains it. *See* U.S. CONST. art. I, §§ 1, 7. The climate change solution can be found in the process of those sections of the Constitution—the parchment chains constraining imperial executive excess—not in "[t]he last place one would expect to find it[—]the previously little-used backwater of" Section 115. *West Virginia*, 597 U.S. at 730.

3. Prime Mover Supports EPA's Alternative Proposal.

Prime Mover also supports EPA's Alternative Proposal, which would repeal portions of the CPS under different rationales. Prime Mover urges EPA to finalize both the Primary Proposal and the Alternative Proposal as independent, severable regulatory actions. In addition, Prime Mover here raises two points not taken up by the Agency in the Proposed Rule.

3.1. EPA Cannot Subcategorize Based on Market Function.

Section 111 carefully delineates the roles of EPA and the States. EPA may (1) set national "standards of performance" for new sources, 42 U.S.C. § 7411(b)(1)(B), and (2) issue guidelines that "permit the State" to set standards for existing sources, *id.* § 7411(d)(1). In performing the first task, EPA "may distinguish among *classes, types, and sizes* within categories of new sources."

Id. § 7411(b)(2) (emphasis added). Nothing in the text extends that limited subcategorization authority to existing units, much less to lines drawn based on retirement plans.

The Biden EPA's use of improper subcategorization represents a separate statutory rationale for repealing all of the CPS's requirements for existing coal EGUs and new gas- and oil-fired combustion turbines.

Subcategorization by retirement converts a performance standard into a non-performance mandate. Section 111 speaks in terms of "performance"—how a source that continues to operate must limit its emissions. A requirement that a unit cease operating by 2032 or 2039 is the antithesis of performance; it is an order not to perform at all. By making shutdown the compliance pathway, the Biden EPA redefined the very subject of section 111 from emission control to forced retirement. That exceeded the Agency's delegated authority. *See, e.g.*, *West Virginia*, 597 U.S. at 746 (Gorsuch, J., concurring) (warning against federal intrusion into States' traditional role in energy regulation).

A retirement date is not a "class," "type," or "size" of source. The CAA's language shows Congress intended physical or operational distinctions tied to the source itself—coal versus gas, boiler configuration, generating capacity—not an owner's business decision. Congress defined "source" and "owner" separately, 42 U.S.C. § 7411(a)(3), making clear that economic choices of the latter cannot define regulatory categories for the former. Nothing in § 7411 authorized EPA to classify by economic viability or preferred corporate strategy.

Retirement-based subcategories usurp the States' statutory prerogative. Section 111(d)(1) expressly "permit[s] the State" to take "the remaining useful life of the existing source" into account when setting performance standards. That directive gives States—not EPA—the discretion to tailor limits for units nearing retirement. By embedding remaining useful life into federal subcategories up front, the Biden EPA eliminated the very issue Congress reserved to the States. It was improper for the Biden EPA to seize through subcategorization when the statute allows EPA to act only as a backstop after a State fails to submit a satisfactory plan. *See id.* § 7411(d)(2)(A).

Because EPA's retirement-date buckets (1) transform performance standards into shutdown commands, (2) rely on a criterion outside "class[], type[], [and] size[]," 42 U.S.C. § 7411(b)(2), and (3) usurp States' authority to consider remaining useful life under § 7411(d)(1), the Biden EPA's approach to subcategorization in the CPS was unlawful—another ground for repealing the CPS.

3.2. CCS Is Not BSER at Either 90% or 40%.

The Biden EPA's CPS was designed to shut down the nation's existing coal-fired power plants. But in reality, new coal plants have already been off the table for nearly a decade, thanks to the 2015 NSPS issued by the Obama Administration. Those rules made it effectively impossible to build new coal plants. *See* 2015 NSPS, 80 Fed. Reg. 64,510. The 2015 NSPS was challenged by 24

States in the D.C. Circuit, and that case is still on hold. *See North Dakota v. EPA*, No. 15-1381, ECF 1668612 (D.C. Cir. Mar. 30, 2017) (order holding litigation in abeyance).

The 2015 NSPS requires any new coal plant to use carbon capture and storage (CCS) technology to capture 40% of its carbon emissions. This requirement is referenced throughout the Proposed Rule, because repealing the 2024 CPS would also mean repealing the 2015 NSPS. *See, e.g.*, Proposed Rule, 90 Fed. Reg. at 25,756.

Under the Primary Proposal, the 2015 NSPS would be fully repealed, as EPA would no longer have authority to regulate GHGs from the U.S. power fleet.

But the 2015 NSPS should also be repealed under the reasoning that supports the Alternative Proposal to repeal the 2014 CPS. For that reason, Prime Mover encourages EPA, in a future rulemaking, to propose and finalize a determination that the 2015 NSPS should be revoked—even if EPA (or a court) were to find that CO_2 emissions from U.S. power plants significantly contribute to climate change.

The reasons why 90% CCS is not BSER and is not achievable for existing plants under the 2024 CPS are essentially the same reasons why 40% CCS is not BSER and is not achievable for new plants under the 2015 NSPS. The necessary pipeline and storage infrastructure to move and permanently store CO_2 does not exist, as the Biden EPA itself admitted in the CPS. CPS, 89 Fed. Reg. 39,855 n.378. As a result, there are only a handful of places in the country where it would even be possible to build a new coal plant that meets the standard, even though the NSPS must establish a nationwide standard.

The D.C. Circuit has made clear that it is EPA's job to show that its standards can actually be met by the industry as a whole. *See, e.g.*, *Nat'l Lime Ass'n v. EPA*, 627 F.2d 416, 433 (D.C. Cir. 1980). EPA must show that it has considered all the relevant factors that affect emissions at different plants. *Id.*; *see also Sierra Club v. Costle*, 657 F.2d 298, 377 (D.C. Cir. 1981) (EPA must show that its test data represent what the industry can actually achieve, given the range of variables that affect achievability).

EPA did not do this in the 2015 NSPS. *See* 2015 NSPS, 80 Fed. Reg. at 64,573–74. Instead, EPA relied almost entirely on a single facility—Boundary Dam—as proof that the standard could be met. *See id*. But now, with ten more years of experience—as was well detailed by the comments to the 2015 NSPS and CPS, the litigation briefing in both,[10] and assuredly the comments on this docket—it is now beyond debate that Boundary Dam was never and is not a reliable, representative example for CCS. And the problems with CCS have only become more obvious. Based on that one flawed example, EPA set a uniform national standard. But as the D.C. Circuit has held, a national standard must be achievable even under the most difficult conditions that can

[10] *E.g.*, States' Reply at 7, N*orth Dakota v. EPA*, No. 15-1381, Dkt. 1656949 (D.C. Cir. Jan. 23, 2017) (citing *Nat'l Lime* and *Costle*); *see also* Non-State Petitioners' Op.Br. at 41–47, North Dakota v. EPA, No. 15-1381, Dkt. 1659209, (D.C. Cir. Feb. 3, 2017) at 41–47.

reasonably be expected. *Nat'l Lime*, 627 F.2d at 431 n.46. The 2015 NSPS did not explain how the serious problems with transporting and storing CO_2—problems that still exist today—could be solved. *Cf. Costle*, 657 F.2d at 341 n.157 ("EPA does not attempt to explain how these results may be used to predict performance in full scale plants throughout the industry."). The real purpose of the 2015 NSPS was to make it impossible to build new coal plants in the United States; achievability was never the goal.

In addition to finalizing the Primary and Alternative Proposals, Prime Mover urges EPA to initiate a rulemaking to repeal the unachievable and illegal 2015 NSPS for new coal-fired EGUs.

4. Repeal of the CPS Will Result in Significant Grid Reliability Benefits—EPA Should Account for them in the Final Rule.

The Biden EPA made several mistakes in its grid reliability analysis. No wonder. EPA is not the agency tasked with overseeing grid reliability—that's FERC, which warned the Biden EPA about CPS's failures. Despite this, the Biden EPA myopically papered over the devastating threat CPS poses to the U.S. grid to serve political ends. But those political ends will run headlong into a reality of lights that don't turn on when the switch is flipped. Americans deserve and demand better.

This was not for lack of warning: many parties—including state utility commissions, grid operators, and industry groups—raised these concerns during the comment periods.[11] EPA's failure to address these issues makes CPS both legally dubious and dangerous for the nation's power supply.

In short, the Biden EPA's CPS was based on unrealistic assumptions and ignored clear warnings from grid experts. The CPS threatens to cause blackouts and undermine the reliability of the nation's power supply. EPA's process was flawed, and new evidence shows the grid is already under serious strain. Repealing or revising these standards is necessary to protect the reliability of the U.S. electric grid and ensure affordable, dependable power for all Americans.

Prime Mover respectfully notes that EPA has an opportunity to take full account of these benefits in its cost-benefit analysis and Regulatory Impact Analysis. Prime Mover commissioned an analysis of the true cost of the Biden EPA CPS within the Midcontinent Independent System Operator (MISO) region of the U.S. The results of this analysis are astounding: **The Proposed Rule will result in $560.7 billion in benefits through 2055 in the MISO region alone.**

This analysis is calculated with the following methodology:

[11] *See, e.g.*, Joint Comments of ERCOT, et al. to the CPS (Aug. 8, 2025); Comments of Southwest Power Pool to the CPS (Aug. 8, 2025); Comments of the Midcontinent Independent System Operator to the CPS (Aug. 8, 2025); Comments of Sens. Capito and Barrasso to the CPS (Dec. 18, 2023) (attaching letters from FERC Commissioners James Danly and Mark Christie).

1. Accounting for the hidden costs in the CPS: The Biden EPA hid most of the costs of the CPS by making the faulty assumption that most of the requirements of the CPS would happen anyway, because of policies enacted in the Inflation Reduction Act. As the recent passage of the One Big Beautiful Bill Act demonstrates, federal tax policy and energy incentives can change dramatically from year to year, but EPA's regulatory framework does not. Always On Energy Research (AOER) estimates that these hidden costs of the CPS, which include the cost of building the energy resources EPA projected would be needed in MISO, total $361 billion, just in MISO.

2. Estimating the total cost CPS compliance: AOER then analyzed the true, total cost of the CPS, including hidden and reported costs by the Biden EPA. As discussed above—and as commenters raised with the Biden EPA when it was developing the CPS—the Biden CPS will result in an unreliable grid with persistent, serious blackouts. As a result, this assessment includes the cost of additional capacity needed to prevent blackouts under demand growth assumptions used when developing the CPS. AOER models the total cost of the CPS to be $404.1 billion—again, only in the MISO region.

3. Modeling the cost of eliminating the Biden Blackouts: Energy demand in the U.S. in every grid region, driven by artificial intelligence, increases in domestic manufacturing, hyperscale data centers, and vehicle electrification. MISO now estimates that peak energy demand will increase 2% year over year, an increase from EPA's estimates, which were 1.2–1.7%, depending on the year. While this trend is new, it was not unknown to EPA. Several commenters—including state utility commissions, grid operators, and industry groups—raised these concerns during the supplemental comment period for the CPS.

As a result, the energy resources that the Biden EPA assumed would be sufficient when developing the CPS would result in rolling blackouts in every year under this new demand scenario. The net result is that the cost of maintaining a reliable grid under the CPS is now much higher because significant new capacity must be built under the constraints of the CPS regulatory scheme. AOER's report models the cost of eliminating the persistent, annual blackouts directly caused by the CPS to be $463.8 billion. This means that the full cost of the Biden EPA's CPS, taking into account MISO's updated demand projections, is $867.9 billion in MISO.

4. Modeling the cost of the Proposed Rule: Finally, to provide an apples-to-apples analysis, AOER modeled the cost of developing a reliable grid under the Proposed Rule—a Trump Energy Dominance scenario. Under this scenario, the cost of maintaining a reliable grid is much less costly because reliable, dispatachable units are not forced to retire and efficient gas-fired power plants can play a greater role in supporting grid reliability. As a result, the mix of MISO energy resources more closely resembles the current MISO grid, with a mix of energy resources and a strong supply of reliable, dispatchable resources.

AOER conducted an hourly reliability assessment of the Trump Energy Dominance scenario and found that it would maintain reliability during all hours of the year.

The cost to meet MISO's new projected demand will cost an additional $307.2 billion by 2055 as compared to the current grid. These investments are significant and needed in the face of rising demand, but far less than the $867.9 billion that would be required under the CPS.

Taking all of this together: In MISO alone, repeal of the Biden EPA's CPS will result in net grid reliability benefits of $560.7 billion. This figure rises to $801.4 billion if MISO states eliminate state-level renewable policies, as may occur given the dramatic shift in demand forecasts in MISO. Even after deducting disbenefits associated with increases in conventional air pollutants—using EPA models that likely significantly overstate these disbenefits, as described in the AOER report—the Proposed Repeal will still deliver $314.6 billion in net benefits in the MISO region.

4.1. Background on AOER's analysis.

Hourly modeling vs. resource adequacy: As AOER explains, "Grid operators and regulatory agencies have often used reserve margin analyses and resource adequacy studies to model the reliability of electric power systems. However, the shift away from dispatchable thermal resources toward intermittent wind and solar generators increases the complexity and uncertainty in these analyses and makes them increasingly dependent on the quality of the assumptions used to construct capacity accreditations." App. A, at 8.

"As the grid becomes more reliant upon non-dispatchable generators with lower reliability values, it is crucial to "stress test" the modeled MISO grid in the Biden Base Case by conducting an hourly reliability analysis by comparing historic hourly electricity demand and wind and solar capacity factors against EPA's installed capacity assumptions from the Biden Base Case output files." *Id.* This is important because a weather event may reduce or eliminate the capacity of intermittent renewable energy resources for a period of hours or days. These anomalies—which occur in the real world—would be hidden in an annual average.

The mechanics of hourly modeling: An hourly reliability model works by first starting with a modeled or hypothetical grid. This is an output of an annualized resource adequacy analysis, which develops an electricity generating fleet assumed to provide enough electricity to meet projected peak demand, with an adequate reserve margin. In this analysis, AOER used the modeled grid that EPA assumed would be sufficient to meet future demand and that complies with the CPS. For the Trump Proposal Scenario, AOER developed a modeled grid without the regulatory constraints of the CPS to meet future demand.

Because this analysis looks out to 2055, the modeling exercise involves analysis of the modeled grid as it develops over time to account for changes to energy demand. For simplicity, this analysis is conducted at five-year intervals, called model years.

The heart of the hourly reliability modeling exercise is to assess the performance of the grid during real-world, historical performance of all resources on the grid. This includes intermittent energy resources and thermal resources, which can both be impacted by extreme weather. The

goal is to assess whether the modeled grid for a given model year will be able to deliver energy to meet demand, based on real-world weather events that have occurred in recent years. This analysis is conducted on an hourly basis, because energy output from a given resource can vary widely throughout the day.

Social Cost of Blackouts: AOER includes discussion of a concept called the Social Cost of Blackouts. As AOER explains:

> Blackouts are costly. They frequently result in food spoilage, lost economic activity, and can also be deadly.
>
> For example, on April 28th, 2025, 50 million people in Spain were affected by a massive country-wide blackout that lasted for 12 to 14 hours. According to the estimates from the main Spanish business advocacy group, the outage was estimated to cost $1.82 billion in economic losses. The blackouts also caused at least ten deaths, including a family of three that died of carbon monoxide poisoning.
>
> AOER calculated the Social Cost of Blackouts in the MISO region using the latest Value of Lost Load (VOLL) estimates for the MISO region. On May 8th, 2025, the Federal Energy Regulatory Commission (FERC) approved MISO's request to increase its VOLL value, which is an estimate of how much electricity customers would be willing to pay to avoid an outage, from $3,500 per megawatt hour (MWh) of unserved load to $10,000 per MWh.

Id. at 11–12. The Social Cost of Blackouts is not included in the cost figures represented here because of the uncertainty involved with the calculations. However, AOER discusses these costs throughout the report to emphasize the point that rolling blackouts, even if brief, impose tremendous cost on the public.

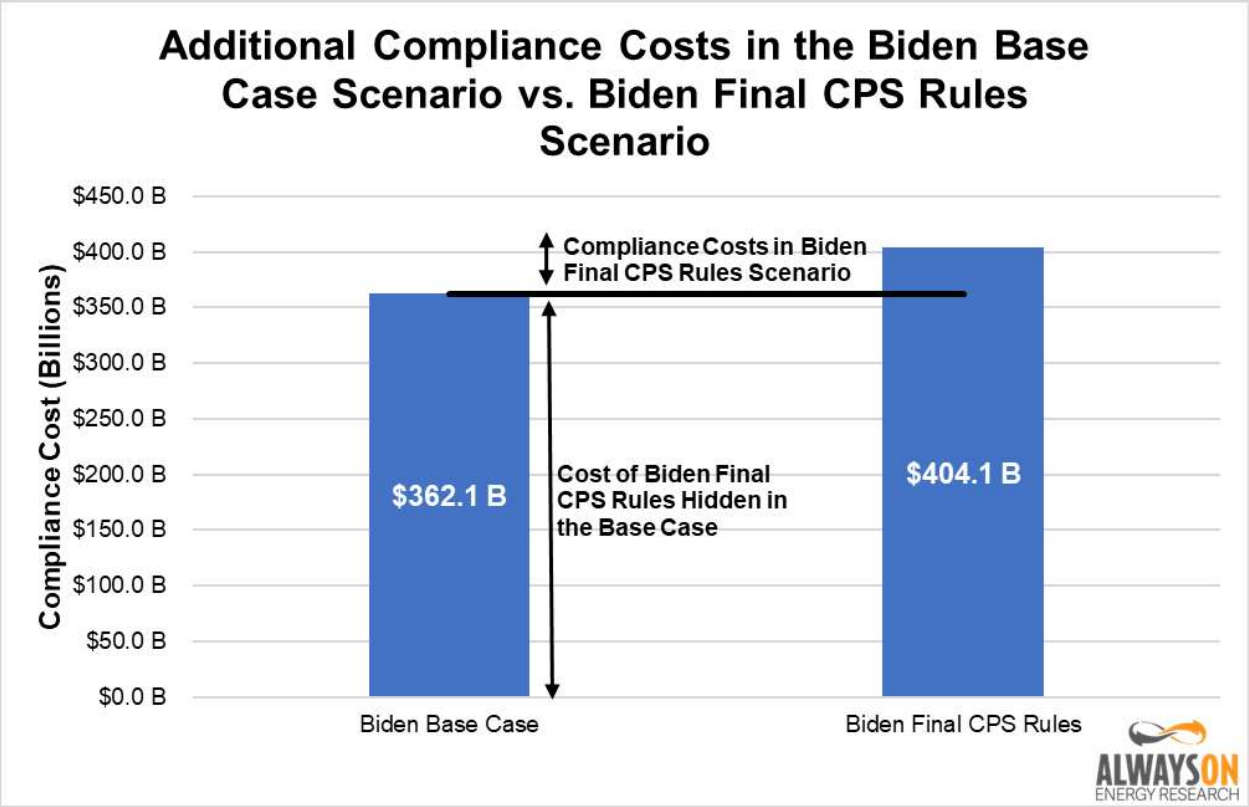
4.2. The full cost of the Biden CPS in MISO was $404.1 billion.

The Biden EPA implausibly claimed that the CPS would only increase costs by $19 billion over a 24-year period by hiding most of the cost of compliance with the CPS. *Id.* at 12. The Agency did so by assuming that these costs were imposed not by the CPS but by the Inflation Reduction Act. *Id.* There is much that could be said about the EPA's logical error, but the most basic flaw in this approach is evidenced by the recent passage of the One Big Beautiful Bill Act (OBBBA), which repealed many of the policies the Biden EPA said would drive changes to the grid. Even after passage of OBBBA, the CPS remains. AOER explains:

> Our modeling indicates that the modeled MISO grid in the Biden Base Case would cost $362.1 billion, using the subsidy phaseout timeline established in the OBBBA, and the Biden Final CPS would cost $404.1 billion. The difference in costs between these scenarios, $42.9 billion, is what the Biden EPA considered a

> compliance cost, even though American families and businesses would see massive increases to their energy bills as a result of building the generation capacity in the modeled MISO grid in the Biden Base Case and the Biden Final CPS Rules.

Id. at 12. Said differently, these costs would always have been borne by the American people, whether as taxpayers or ratepayers, or a bit of both. Either way, EPA should have accounted for these costs and has the opportunity to include them in its cost-benefit analysis now. The following figure illustrates the point:



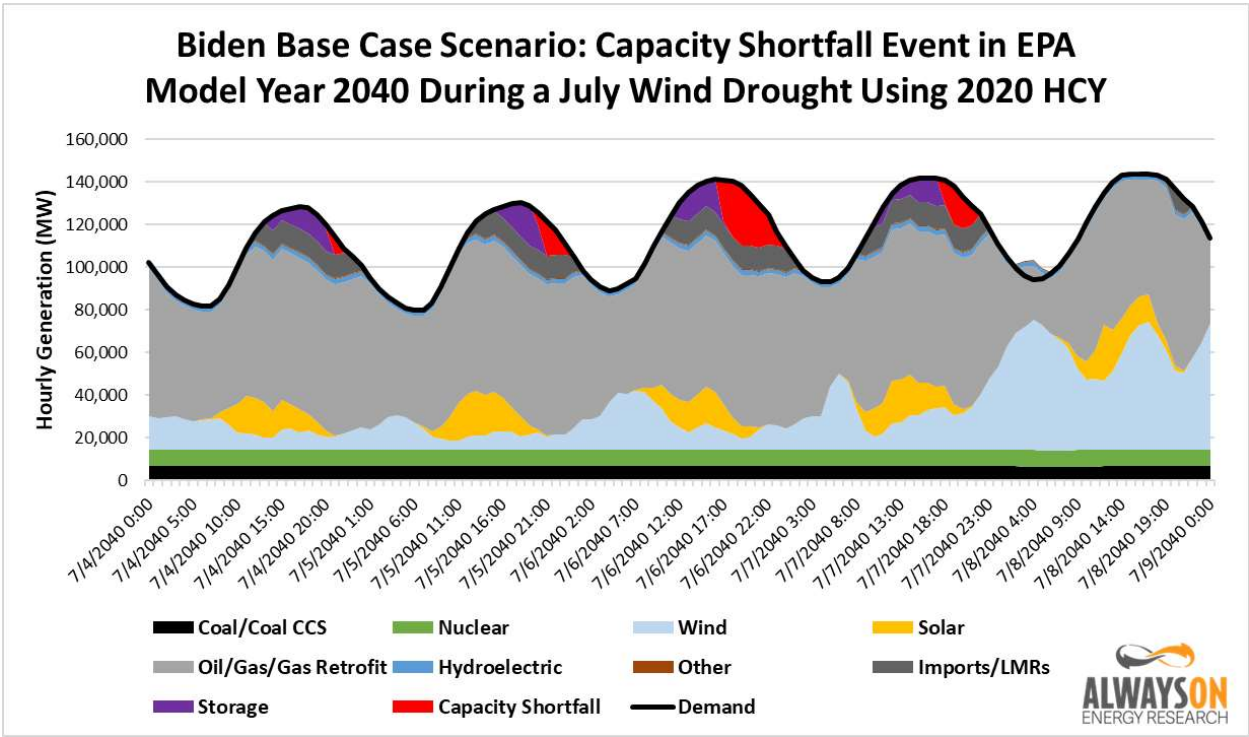
This is not the end of the Biden EPA's error here: "The Biden administration did not perform a resource adequacy or reliability analysis on the Biden Base Case; it simply assumed it to be adequate and reliable." *Id.* at 9.

AOER then conducted an hourly reliability assessment of the Biden Base Case to determine whether it was reliable, as EPA assumed:

> Given the massive changes in the U.S. electric grid that the Biden EPA attributed to the IRA in the Biden Base Case, it is indefensible that the EPA did not conduct a resource adequacy or reliability analysis of the modeled MISO grid in the Biden Base Case IPM output files.

> To make a pointed analogy, the Biden EPA's narrow tailoring of its resource adequacy analysis to only examine the difference in resource adequacy between the Biden Base Case and the Biden Final CPS Rules without assessing the resource adequacy or reliability of the Biden Base Case was the regulatory equivalent of making sure the top floor of a 100-story building is built to code without doing the same for the preceding 99 floors, with the expected disastrous results.

Id. at 9. This analysis revealed "a devastating 28.6 GW capacity shortfall, *i.e.*, rolling blackout, in July 2040, representing 20.6 percent of the demand at the time of the capacity shortfall, meaning one in five homes would be subjected to rolling power outages," shown in the figure below. *Id.* at 10.



The true cost of the Biden Base Case, then, must include the cost of building increased capacity to prevent such blackouts. AOER estimates that the total cost of the Biden Base Case is $401.1 billion in the MISO region alone. *Id.* at 20–21.

AOER concludes: "The Biden Base Case obscures the true cost of the Biden Final CPS Rules, cannot keep the lights on, and is based on outdated assumptions. Therefore, we urge the Trump administration to discard its use in this regulatory proceeding in favor of comparing the cost of the Biden Final CPS Rules to an illustrative Trump Proposal policy scenario that better reflects the current state of the electricity industry." *Id.* at 15.

4.3. The cost of the Avoiding Biden Blackouts Scenario is an additional $463.8 billion—the total, real cost of the Biden CPP 2.0 in MISO alone is $867.9 billion.

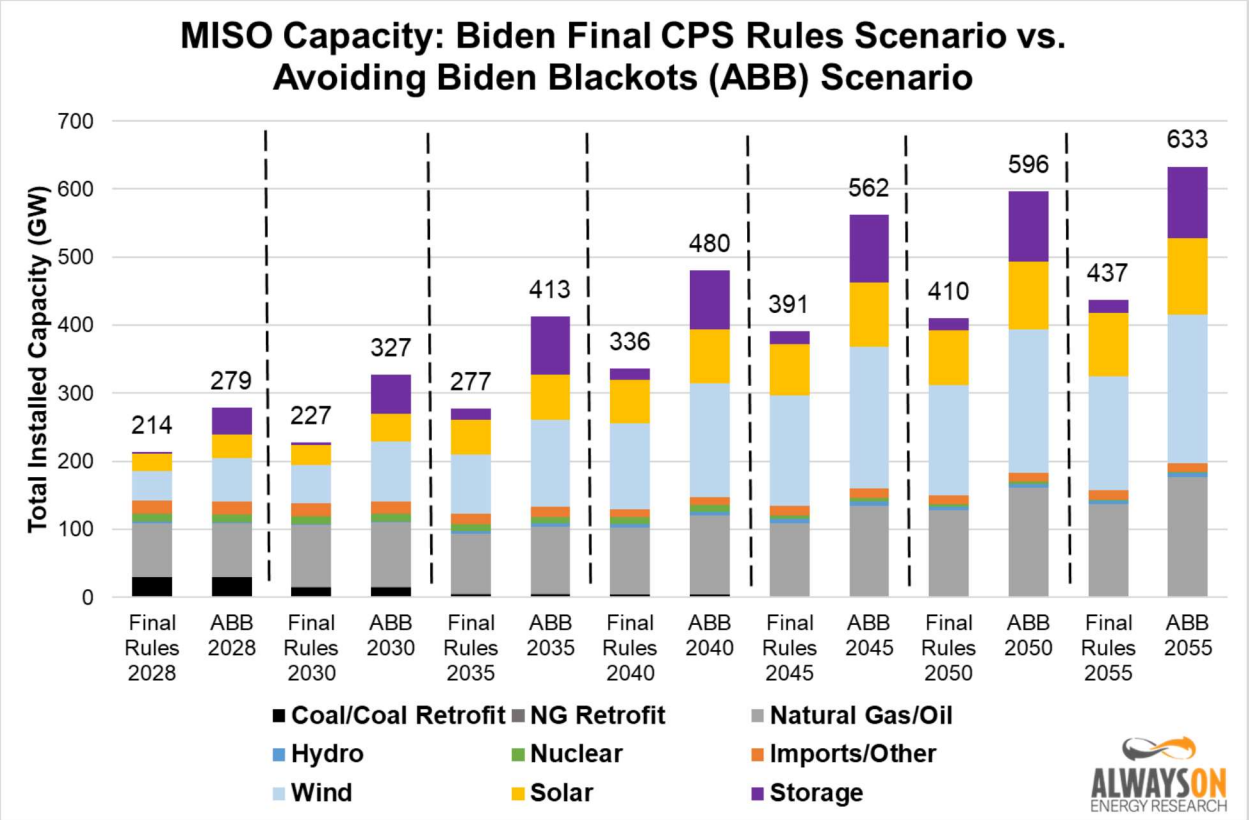
The Biden EPA opened a supplemental comment period at the end of 2023 to receive comments on questions of grid reliability. At that time, a new trend was emerging: after decades of flat growth in demand for electricity, demand was beginning to skyrocket, driven by artificial intelligence, reshoring of American manufacturing, and hyperscale data centers. Several commenters drew attention to a December 2023 Grid Strategies report, *The Era of Flat Power Demand Is Over*.[12] This report showed that the forecast for cumulative electricity growth over the next five years jumped from 2.6% to 4.7% in just one year. *The Era of Flat Power Demand Is Over*, at 3.

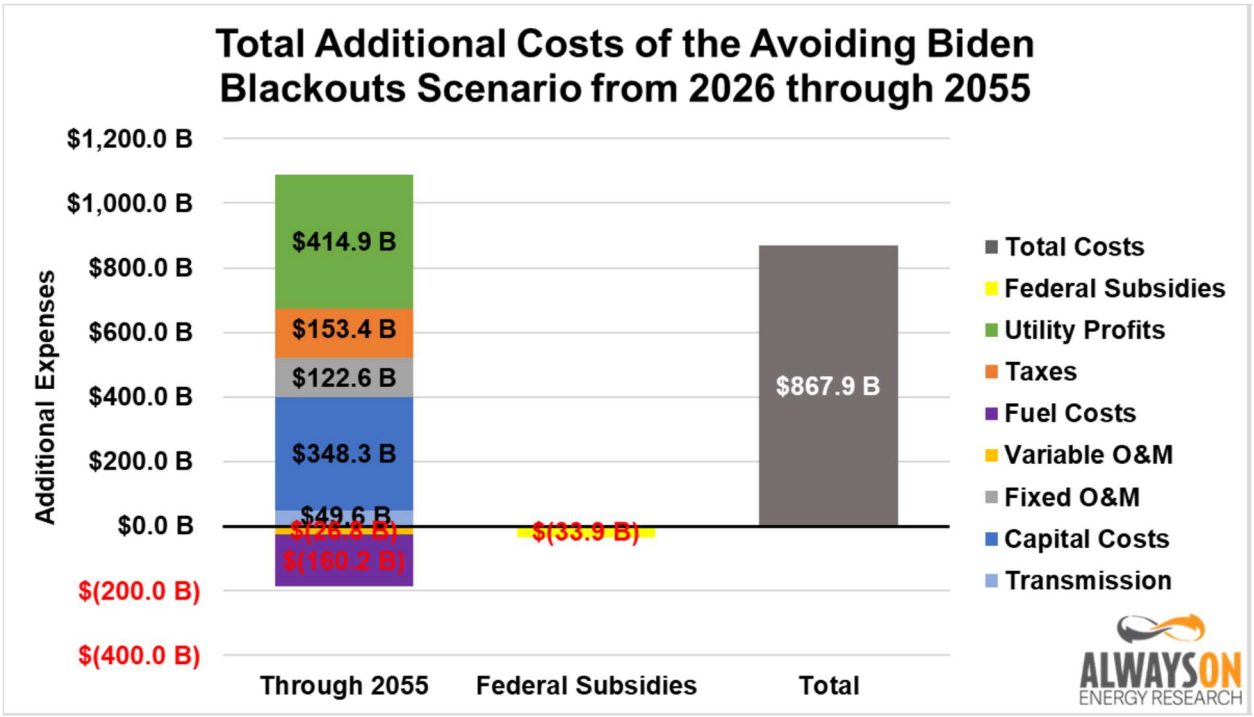
Since then, all regional grid authorities have made significant adjustments to their demand forecasts, including MISO. App. A, at 21. The previous section examined the full cost of the Biden EPA's CPS at the time they were finalized, including the cost of solving the reliability problems in MISO the CPS created.

Now that MISO has dramatically increased its demand forecast, what is the full cost of building a grid that complies with the CPS and meets future demand? AOER's analysis determines that, unsurprisingly, increases in demand will result in significant increases in reliability issues. *Id.* at 21–22.

What is the cost of the CPS today, now that regional grid operators have dramatically increased their demand forecasts? AOER analysis determined that "Building enough additional wind, solar, battery storage, and natural gas capacity to prevent blackouts would require 196 GW of additional capacity, consisting of an additional 49.9 GW of wind, 20 GW of solar, 86.3 GW of four-hour battery storage, and 40.5 GW of natural gas, compared to the Biden Final CPS Rules in the IPM output files." *Id.* at 22. The following figures illustrate the needed energy mix and costs associated with building them. *See id.* at 22–23.

[12] *E.g.*, Supplemental Comments of the Cato Institute on the CPS, at 3–4 (Dec. 20, 2025) (citing John D. Wilson and Zach Zimmerman, *The Era of Flat Power Demand Is Over*, GridStrategies (Dec. 2023), https://gridstrategiesllc.com/wp-content/uploads/2023/12/National-Load-Growth-Report-2023.pdf).





In short, the total cost of building a reliable grid under the regulatory burden of the Biden EPA's CPS today, including OBBBA energy policy changes and increases in the MISO demand outlook is a staggering **$867.9 billion in MISO alone**.

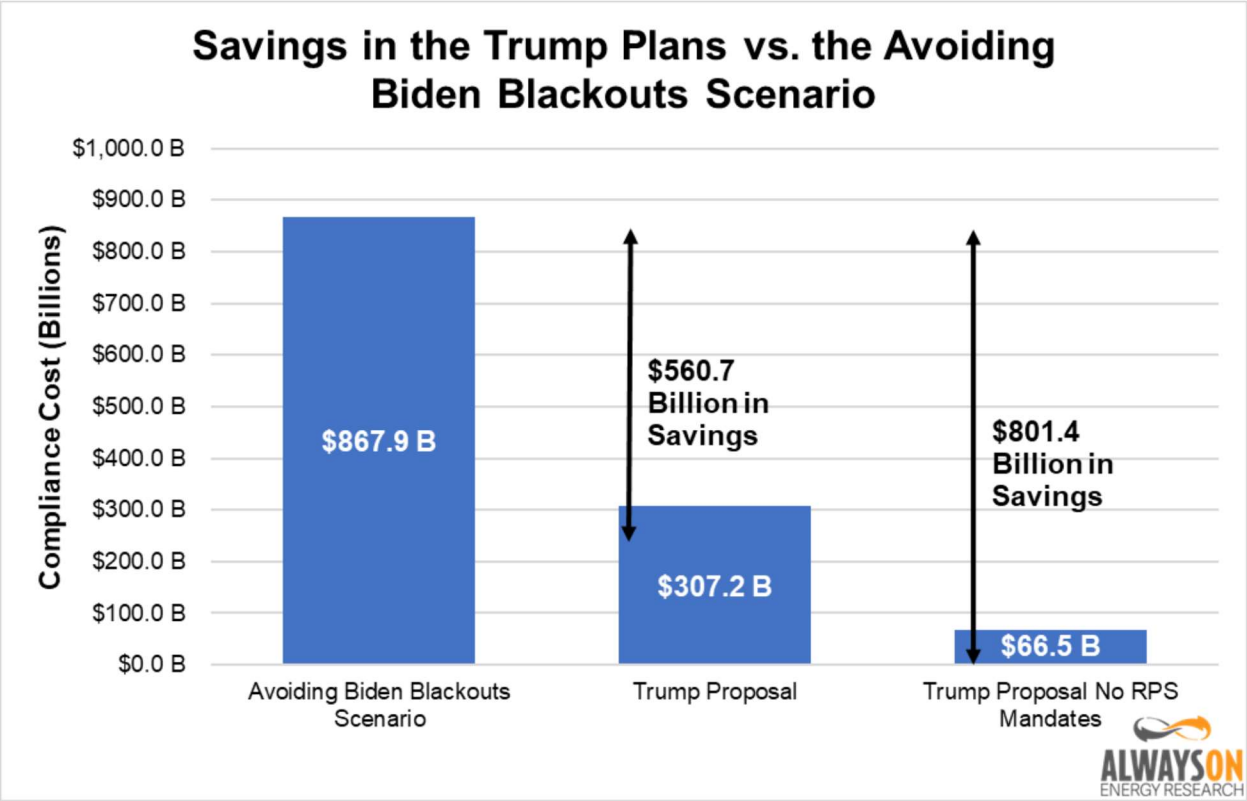
4.4. The Trump Proposal will result in benefits to the public in MISO alone of $560.7 billion.

Stepping back, the "entire purpose of the Trump administration's repeal of the Biden administration's regulations on greenhouse gas emissions on existing coal plants and new natural gas plants, and the repeal of the Clean Air Act Section 111(b) standards for new coal plants, is to give utilities and power plant owners the freedom to continue using these reliable, affordable assets for the foreseeable future and to have the confidence needed to build new power plants to meet America's rising need for electricity in the coming decades." *Id.* at 23.

As discussed above, the U.S. demand outlook has changed significantly, and new electricity generation will needed across the country. To assess the cost of bringing this new generation online in a deregulated environment, "AOER [] developed an illustrative Trump Proposal Policy Scenario for the MISO region that creates a more balanced and reliable resource portfolio." *Id.* As AOER explains:

> The modeled MISO grid in the Trump Proposal Policy Scenario more closely resembles the existing MISO grid because the rules are, in large part, intended to preserve the reliable, low-cost power plants that currently keep the lights on in the region and remove impediments to the construction of new natural gas plants to meet rising electricity demand.
>
> . . .
>
> AOER modeled the economic impacts of the modeled MISO grid under the illustrative Trump Proposal and determined that building this installed capacity to meet the projected demand growth would cost an additional $307.2 billion by 2055, compared to the current grid.
>
> While MISO ratepayers will incur significant expenses to meet future power demand estimates under the Trump Proposal, it will save these families and businesses at least $560.7 billion through 2055, compared to the cost of the Avoiding Biden Blackouts scenario, with potential benefits up to $801.4 billion if the impacts of state policies are excluded from the analysis.
>
> The primary benefit of the Trump Proposal is that it will grant power plant owners, especially coal plant owners, a welcome reprieve from the onerous Section 111(d) requirements in the Biden Final CPS Rules, allowing these coal plant owners to run their facilities for the foreseeable future. It will also remove regulatory obstacles to building the new natural gas plants needed to meet rising demand.

Id. at 24, 26. The following figure illustrates the tremendous benefits that the Proposed Rule will generate—again, solely considering the MISO region—as the U.S. builds the energy grid needed to win the AI race and support economic growth for the future. *Id.* at 30.



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This analysis is intended to provide further support for EPA's repeal of the CPS and to demonstrate a methodology for EPA to fully analyze the nationwide benefits of repeal of the CPS. Prime Mover and AOER urge EPA to consider further supporting the final rule with an analysis that shows these benefits that flow from its deregulatory actions.

CONCLUSION

EPA is right to repeal the CPS. Prime Mover Institute urges the Agency to finalize both the Primary Proposal and the Alternative Proposal as independent, severable agency actions.