

Testimony of Paul H. Vining

President

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The proposed Greenhouse Gas New Source Performance Standard (NSPS)

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Thank you, Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee for the opportunity to testify today on an issue of vital importance to the survival of our domestic coal industry. I would also like to thank my home Congressman, Representative Morgan Griffith, for his interest and leadership in highlighting the impacts of this Administration’s regulatory agenda on southwest Virginia and other coal-producing communities. I ask that my full written testimony be placed into the committee record.

My name is Paul Vining and I serve as President of one of America’s leading coal companies, Alpha Natural Resources, Inc. I have previously served as Alpha’s Chief Commercial Officer and, before that, held various other executive leadership positions with a number of Alpha’s

industry peers. Alpha Natural Resources' affiliates collectively rank as America's second-largest coal producer by revenue and third-largest by production. Alpha is also the nation's largest supplier of metallurgical coal used in the steel-making process and is a major supplier of thermal coal to electric utilities and manufacturing industries. Alpha was formed in 2002. Ten years later, at the beginning of 2012, Alpha's affiliates operated over 150 coal mines, employed a workforce of approximately 14,000 men and women, and served more than 200 customers on five continents. We are a company accustomed to growing.

As this committee is all too familiar, these are tough times in coal country. Historically low natural gas prices, an unseasonably warm winter, and announcements of premature coal-fired power plant retirements due to burdensome federal regulations have combined to create a sustained weakness in the domestic steam coal market. Alpha employers alone have reduced our workforce by over 750 hard-working men and women in recent months, and many of our industry peers have made similar workforce reductions. Mines are being idled, jobs are being lost, and as a result, many Appalachian communities are facing a reduced tax base upon which to serve their citizens.

This is not the first downturn the coal industry has had to weather. Energy markets are cyclical. Natural gas prices are historically volatile and are certain to increase. Seasons change. As electricity demands increase, suppliers react, and the market stabilizes. That is how it's supposed to work. Unfortunately, the current Administration – and particularly the U.S. Environmental Protection Agency (EPA) – continues to significantly and artificially influence our domestic electricity market through the promulgation and enforcement of regulations and

other agency actions that hinder both the production and use of America's abundant coal resource.

As with any political action, there is a wide spectrum of opinions as to the true economic impacts these rules will have. When estimating the impacts on our utility sector of the recently finalized Mercury and Air Toxics Standards (MATS) rule, commonly referred to as Utility MACT, for example, the EPA predicted that less than 5,000 megawatts of electric generation capacity would be retired as a result of the rule.¹ The real-world impacts have been much more severe, with the utility sector already announcing over 25,000 megawatts of premature, coal-fired power plant retirements tied directly to the Utility MACT and other recent EPA air emission rules – a five-fold increase over EPA estimates.

The effect of these rules is concerning enough when trying to predict how that 25,000 megawatts of electric generation being taken offline will impact our nation's power grid. In its "2011 Long-Term Reliability Assessment" issued last November, the North American Electric Reliability Corporation stated that "Existing and proposed environmental regulations in the U.S. may significantly affect bulk power system reliability." However, the increased regulatory burden becomes even more worrisome when considering the expected loss of 180,000 to 215,000 jobs in 2015, GDP losses totaling as much as \$112 billion, and reductions of total household disposable income by as much as \$71 billion.²

¹ "Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards," Environmental Protection Agency; December 2011.

² "An Economic Impact Analysis of EPA's Mercury and Air Toxics Standards Rule," NERA Economic Consulting; March 1, 2012.

I have heard some Members of this committee and the broader Congress refer to the regulatory actions of this Administration as “the war on coal.” While there is no question that our industry is being detrimentally impacted, I would respectfully assert that this is not just a war on coal. What we are experiencing is a war on affordable electricity, a significant building block of American prosperity, and it will be American consumers, small businesses, and an already struggling domestic manufacturing sector that will pay the price in the years ahead.

On March 27th, the EPA released yet another proposal that will directly impact what fuel sources are allowable for use by our domestic electric utility sector. The “Standards of Performance for Greenhouse Gas Emission from New Stationary Sources: Electric Utility Generating Units,” or more commonly referred to as the New Source Performance Standards (NSPS) for greenhouse gases, sets output-based limits on carbon dioxide (CO₂) emissions from new fossil fuel-fired power plants. More specifically, under the proposed rule, new fossil-fuel generating facilities would be required to meet an output-based NSPS of 1,000 pounds of CO₂ per megawatt-hour (lb. CO₂/MWh). This is a standard the EPA estimates could be met without any additional emissions controls by approximately 95% of the natural gas combined-cycle (NGCC) units built since 2005, as well as all new natural gas combined-cycle plants.

In contrast, new, conventional coal-fired generating units would be capable of meeting this new standard only by employing the use of highly expensive carbon capture and storage technology (CCS). Interestingly and importantly, simple-cycle or “peaker” natural gas units – which are often used as baseload power to support renewable energy facilities and which generally have a significantly higher CO₂ emissions rate than their combined-cycle counterparts – are exempted

from the proposed rule. In other words, only new coal-fired facilities would be put under any regulatory compliance pressure by the proposed NSPS.

In its Regulatory Impact Analysis (RIA) for the proposed standard,³ the EPA justifies the proposal by reference to its Endangerment and Cause or Contribute Findings for Greenhouse Gases, which states that “the anthropogenic buildup of GHGs in the atmosphere is very likely the cause of most of the observed global warming over the last 50 years.” Further, the RIA asserts that “CO2 is a [greenhouse gas] and power plants are the country’s largest stationary source emitters of [greenhouse gases].” The RIA further states that “this proposed rule is consistent with the President’s goal to ensure that ‘by 2035 we will generate 80 percent of our electricity from a diverse set of clean energy sources...’ and “...demonstrates to other countries that the United States is taking action to limit GHGs from its largest emissions sources.”

Based on these statements, an observer could logically assume that the proposed standard will result in a decrease of greenhouse gas emissions from the U.S. electricity sector. Again citing the EPA’s RIA, however, the agency states that it “does not project that any new coal capacity without federally-supported CCS will be built... due in part to the low cost of base load [natural gas combined-cycle] capacity,.... relatively low growth in electricity demand, and use of energy efficiency and renewable energy resources.” In turn, “EPA anticipates that the proposed [standard] will result in negligible CO2 emission changes, energy impacts, quantified benefits, costs, and economic impacts by 2020.”⁴ For the sake of clarity, let me state that again: the

³ Regulatory Impact Analysis for the Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, Environmental Protection Agency; March 2012

⁴ Ibid.

EPA's own analysis assumes that this proposal will neither reduce domestic CO2 emissions levels long-term, nor impact the economy in any way. So what is the purpose of the standard?

EPA asserts that this proposed rule will “contribute to downward pressure on CCS costs by shifting the regulatory landscape towards CCS.”⁵ As Assistant Administrator for Air and Radiation Gina McCarthy recently stated in her testimony to your subcommittee on June 29th, EPA claims the proposed NSPS also “eases” the technological burden imposed on coal by proposing “an alternative compliance pathway, whereby units implementing CCS could comply by meeting the standard on average over the course of a 30-year period.”

EPA's position on how to advance the development of CCS is directly contrary to the recent recommendations of the International Energy Agency (IEA),⁶ which advocates that the goal of CCS incentive policy at this time needs to focus on commercial scale trials to develop the technology and lower its costs. It further warns that initial policy efforts should not seek “to make emissions reductions for their own sake,” asserting that “when the technology is immature, it is not credible to force emissions reductions through high carbon prices.” Since a mandatory performance standard is at least equivalent to setting high carbon prices, IEA's assessment in effect dubs the EPA proposal “not credible.” What EPA therefore recognizes in its alternative compliance option, but fails to adequately address in the proposed standard, is that CCS is far from a commercially available technology.

⁵ Proposed rule

⁶ “Policy Strategy for Carbon Capture and Storage,” International Energy Agency; January, 2012

By statute, a new NSPS is required to reflect the application of the “best system of emission reduction” that “has been adequately demonstrated,” taking into account costs, environmental impacts, and energy requirements. With limited exceptions, the statute forbids EPA from expressly requiring any new or modified sources to adopt a particular control technology. Instead, EPA must establish a performance standard (e.g., a maximum emissions rate) and allow sources to determine how best to meet that standard.⁷ As a technology still in its developmental infancy, CCS has not been “adequately demonstrated,” nor used in any widespread fashion.

While there are a number of CCS demonstration projects in the design, construction or operation phase in the United States, all are attached to plants that are much smaller than a 1,700 megawatt coal-fired power plant, generally between 500 and 1,000 MW. At its current stage of development, CCS is also prohibitively expensive, siphoning between 20 and 30 percent of a power plant's energy and adding between 50 and 100 percent to the price of electricity.⁸

Until full commercial deployment is realized, power companies are extremely and understandably unlikely to spend \$2 billion or more for a new coal-fired power plant whose federal regulatory compliance depends entirely on the effectiveness of an unproven technology. EPA's 30-year averaging provision doesn't adequately address this investment risk, particularly without manufacturer guarantees for the yet-to-be-deployed technology. As such, this NSPS rule sets an insurmountable standard for advanced coal-fired facilities and installs a level of compliance risk that will inhibit and preclude any large-scale attempts to pursue coal-with-CCS in the first place.

⁷ “EPA Proposes Greenhouse Gas Emission Limits for New Electric Generating Units,” VanNess Feldman summary; March 29, 2012

⁸ “Debate rages over EPA carbon rule's impact on CCS development,” *Greenwire*; May 2, 2012

This has been recognized by the IEA,⁹ which has concluded that commercial scale testing and demonstration must occur prior to implementing policies that seek to force CCS deployment. The EPA “cannot simply state ‘that CCS has been demonstrated to be technologically achievable,’ or that ‘CCS is feasible and sufficiently available.’”¹⁰ Basic economics and utility generation fleet planning dictate that the lowest-cost option is usually the one pursued and/or approved. Put more simply, the proposed standard will not, as the EPA claims, “contribute to downward pressure on CCS costs,” but instead, will all but stall that investment.

In February of 2010, President Obama issued a formal Presidential Memorandum entitled “A Comprehensive Federal Strategy on Carbon Capture and Storage.” In announcing the initiative, the President proclaimed that “My Administration's new CCS strategy will pave the way for this energy transition by identifying and removing barriers to rapid commercial deployment and by providing greater legal and regulatory clarity.”¹¹ In point of fact, EPA’s proposed NSPS for greenhouse gases has arguably created, for no environmental benefit, the biggest single hurdle that CCS development has faced to date. After justifying the rule as consistent with the President’s goal of reducing greenhouse gases, but then admitting that the proposal will fail to accomplish any such reduction, EPA then fails to rationally and reasonably explain the net effect of the proposal – to effectively prohibit the construction of new coal-fired electric generation capacity in the United States.

⁹ “Policy Strategy for Carbon Capture and Storage,” International Energy Agency; January, 2012

¹⁰ Comments of Coal Utilization Research Council on EPA’s Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, Docket ID No. EPA-HQ-OAR-2011-0660, Coal Utilization Research Council; June 25, 2012.

¹¹ <http://www.whitehouse.gov/the-press-office/presidential-memorandum-a-comprehensive-federal-strategy-carbon-capture-and-storage>

Just two days after the EPA released its greenhouse gas NSPS proposal, EPA Region 1 Administrator Curt Spalding explained to a Yale University audience the real purpose of this proposal. He stated, and I quote:

“Lisa Jackson has put forth a very powerful message to the country. Just two days ago, the decision on greenhouse gas performance standard and saying basically gas plants are the performance standard which means if you want to build a coal plant you got a big problem. That was a huge decision. You can’t imagine how tough that was. Because you got to remember if you go to West Virginia, Pennsylvania, and all those places, you have coal communities who depend on coal. And to say that we just think those communities should just go away, we can’t do that. But she had to do what the law and policy suggested. And it’s painful. It’s painful every step of the way.”

Notwithstanding the contradiction between that statement and the EPA’s official Regulatory Impact Analysis of no economic impacts, we agree with the regional administrator that this rule results in all pain, and no gain. The Administration is effectively, and sometimes surprisingly openly, enacting a slate of policies that prohibit the use of coal. Granted, as a coal company, Alpha has a self-interest in the continued use of our product. As an American citizen, and one very familiar with the energy needs of our nation, I also have real concerns with any policy that reduces our ability to economically utilize our own abundant domestic resources or limits our access to reliable and affordable electricity.

In setting this proposed NSPS for greenhouse gases, the EPA decided to break from all past agency practice by establishing a new, fuel-neutral standard instead of one that recognizes the difference between fuel types in terms of cost, available technology, and standard achievability.¹² Within its April 13, 2012 Federal Register notice relating to the NSPS proposal, EPA attempts to justify this action. Specifically, the agency states that “[It] consider[s] this departure warranted in light of both the emissions benefits and the changed economic circumstances, notably the lowered prices of natural gas due to technological development and recent discoveries that have boosted recoverable reserves.” In other words, the EPA believes that, historic price volatility aside, the availability and low current market price of natural gas justifies the elimination of coal from America’s fuel mix.

Such an assumption is both economically short sighted and politically naïve regarding the control of global CO₂ emissions. A recent IEA report¹³ on the “dash to gas” argues that international goals to mitigate global mean temperatures “cannot be accomplished through greater reliance on natural gas alone.” IEA concludes that a number of measures will be necessary, including “broad application of new low carbon technologies, including power plants and industrial facilities equipped for [CCS].” Again, by suffocating private sector investments to help develop CCS to economic scale, the Administration is jeopardizing whether CCS will ever be commercialized at all.

¹² Comments of the National Mining Association on EPA’s Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, Docket ID No. EPA-HQ-OAR-2011-0660, National Mining Association; June 25, 2012

¹³ <http://www.worldenergyoutlook.org/goldenrules/>

In conclusion, this greenhouse gas NSPS fails to adhere to the statutory limitation of adequately demonstrated emissions control systems, acknowledges its failure to reduce global CO₂ emissions, and unabashedly admits its preference toward natural gas over coal as a domestic fuel source. While America's energy security and American consumers' pocketbooks continue to suffer from a lack of a comprehensive and cohesive national energy policy, this Administration is requiring a "one fuel alternative" as the only path forward. I would respectfully assert that now is simply not the time to handicap our own economic health for no discernable environmental gain while our international competitors continue to strive for prosperity.

Thank you for the opportunity to testify and I would be pleased to answer any questions from the panel.