

STATEMENT OF JACKSON MORRIS, PACE ENERGY & CLIMATE CENTER

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- My name is Jackson Morris. I am Director of Strategic Engagement with the Pace Energy and Climate Center based at Pace Law School.
- EPA has proposed to regulate carbon from existing power plants, with a rule to be issued in June of 2014. Based on extensive legal analyses by a number of leading Clean Air Act experts, Section 111(d) of the Act is clearly the appropriate section under which to regulate greenhouse gases from existing power plants.
 - Section 111(b) directs EPA to list categories of stationary sources that significantly contribute to dangerous air pollution, and establish new source emission standards for air pollutants from such stationary sources. Power plants have been listed under 111(b) since 1971. Existing power plants represent over 40% of the nation's greenhouse gas emissions, the nation's largest single source of carbon pollution.
 - Section 111(d) directs the development of emissions standards for existing sources in the 111(b) categories for any pollutants that are not separately addressed in the Act as hazardous or criteria pollutants.
 - Section 111(a) provides clarity on how these emissions standards are determined. §111(a) directs the *EPA Administrator* to identify the most effective ("best") system of emission reduction that has been "adequately demonstrated," considering cost, effects on energy, and other environmental effects. The terms of this definition are explicitly incorporated into the whole of §111. §111(d) therefore incorporates this assessment in directing the Administrator to review state plans to determine whether or not the plans are "satisfactory." Therefore, §111 as a whole directs a federal-state collaboration in which EPA sets a federal floor, and states are invited to submit compliant plans.
 - **§111(d) authorizes binding federal guidelines:** Since 1975, EPA has held that Section 111(d) authorizes it to set environmental performance standards and ensure that state plans meet them. Over the last 40 years, the Agency has used Section 111(d) for a number of major sources of harmful air pollution including municipal solid waste landfills, municipal waste combustors, and sulfuric acid plants. The SCOTUS has held that States issue Section 111(d) standards "in compliance with [EPA] guidelines and subject to federal oversight." *Am. Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527, 2537 (2011).
 - **§111(d) can be used to foster technological innovation:** Opponents assert that carbon capture and storage (CCS) is not yet widely deployed and that it therefore cannot be the "best system of emission reduction" for new coal-fired power plants. However, Senate committee notes state that Section 111 was designed to promote emerging technology that need not "be in actual routine use somewhere," just as flue gas scrubbers were promoted by §111(d) in the 1970s before they had been widely adopted.
 - **§112 is not the appropriate place to regulate carbon pollution:** Opponents claim that EPA may not regulate carbon from any industrial source, such as power plants, if the Agency has regulated *hazardous* air pollutants from that source under a different section of the Act (Section 112). This argument is born out of subtly conflicting House and Senate version of the 1990 CAA amendments, the unsupported presumption that the House meant to radically reshape §111(d) authority, and the further incorrect assumption that this reading must control. In such a case, SCOTUS' *Chevron* doctrine holds that EPA's interpretation of the Act controls unless it is wholly

unreasonable and impermissible. §111(d) is therefore the appropriate section under which to regulate carbon pollution.

- Based on both materials released to date by EPA and numerous statements by various EPA staff and Administrator Gina McCarthy, it appears the federal regulations will seek to maximize the flexibility for states comply as they work to submit their state plans by June of 2016. We believe maximum flexibility should be contingent upon a standard being sufficiently stringent to drive meaningful reductions in greenhouse gases from the power sector. Pace sees three general compliance pathways available, depending on the regulatory and market characteristics of any given state, all of which (if appropriately designed) should meet the EPA definition of “Best System(s) of Emissions Reduction” under the Act.
- Option 1: An Integrated Resource Plan (IRP) approach in which vertically integrated utilities under PUC jurisdiction submit plans by which to reduce their fleet’s emissions over a certain time period. As Pennsylvania has been de-regulated, this option is likely not appropriate to pursue.
- Option 2: The creation of State-wide emissions rates. Under this approach, championed by NRDC, EPA would create state-by-state emissions rate baselines based on the share of electricity generated by coal and gas-fired plants in each state over a baseline period, then set target emission rates for each state between now and 2020. Covered power plant’s emissions would be averaged. Covered plants could trade credits generated through state-regulated energy efficiency programs, or by utilizing low- or zero-emitting sources, such as wind and solar.
- Option 3: Adopting a market based system such as the Regional Greenhouse Gas Initiative Model. RGGI states have convened a collaborative in support of this approach, which includes many electric generators who will be subject to forthcoming 111(d) standards. This Collaborative has recently submitted principles to EPA in support of strong federal 111(d) action that promotes the RGGI model. Participants met with EPA to deliver these principles last week. The following organizations are part of the Collaborative and include utilities, electric generators, environmental groups, business coalitions and state officers throughout the Northeast and Mid-Atlantic Region:

Calpine Corporation
Chesapeake Climate Action Network
Consolidated Edison
Environmental Defense Fund
Environment Northeast
Exelon Corporation
National Grid
Natural Resources Defense Council
New England Clean Energy Council, and
NextEra Energy

- These groups believe that (1) RGGI should qualify as a compliance mechanism framework under forthcoming EPA rules under Section 111(d) of the Clean Air Act, and that additional states should be allowed to use the RGGI mechanism; (2) Federal guidelines should give states, including those participating in RGGI, appropriate credit for the emissions reductions achieved due to efforts taken prior to the effective date of the federal requirements; (3) In setting a “best system of emission reduction,” EPA should evaluate the RGGI cap-and-trade mechanism as an applicable model for other interested states; and (4) EPA should support interested states with assistance to facilitate the use of the RGGI mechanism to achieve reductions.