

Overview of the Legal, Science and Energy Economics Arguments for Not Replacing the CPP and Rescinding the 2009 Endangerment Finding* & Its Key Ramifications

Ramifications of the Legal, Science and Energy Economics Findings

- **CO2 is a Beneficial Gas, not a Pollutant -so the Social Cost of Carbon (SCC) is Negative -since CO2 is so very critical to plant growth and therefore human life.**
- **The 2009 Endangerment Finding must be reconsidered and rescinded/vacated -in which case, the CPP would not be replaced.**
- **All future Federal, State and private sector decisions regarding the Nation's electric power grid must focus solely on minimizing consumer electricity prices as well as maximizing Grid Reliability and Resilience. No consumer electricity price increases should be permitted by regulators that result from increased Renewables/Energy Storage Grid penetration.**
- **The Current Reconsideration of future vehicle MPG Standards must treat CO2 reduction as a cost, not a benefit, so that only consumer preferences matter, not climate change issues. Currently, expecting years of low gasoline prices, most consumers prefer trucks & SUVs.**

***Based on the Concerned Household Electricity Consumers Council (CHECC) Comment in response to EPA's ANPRM CPP Replacement**

[CHECC CPP ANPRM Replacement Comment FINAL to EPA 022618 \(1\)](#)

Filed February 26, 2018

Legal Arguments for Rescinding the 2009 Endangerment Finding

Overview of Legal Arguments

- The Section 112 exclusion bars regulation under Section 111.
- Regulation of existing sources depends on valid regulation of new sources, which does not yet exist because there is no valid Section 111 endangerment finding.
- There is no lawful Section 111 endangerment finding because:
 - EPA cannot rely on source category findings for different pollutants from different source categories adopted in 1971 and 1977.
 - A Section 111 endangerment finding is sufficiently distinct from a Section 202 endangerment finding that EPA cannot rely on the 2009 Section 202 endangerment finding.
 - The 2009 endangerment finding did not comply with the requirements for highly influential scientific assessments.
 - The purported new endangerment finding in the NSPS Rule is not HISA-compliant.

Details on the Legal Arguments summarized above

1. Regulation of existing fossil fuel fired Electric Generating Units (“EGUs”) under Section 111(d) of the Clean Air Act is prohibited by the plain language of Section 111(d) because they are already regulated under Section 112. EPA does not have legal authority to simply ignore the Section 112 exclusion, nor to “reinterpret” it to permit that which it plainly forbids. For EPA to launch the regulatory take over and radical restructuring of the entire electric power generating sector of the economy requires a clear statutory grant of authority, not an outlandish repudiation of an unambiguous statutory prohibition.

2. Even absent the Section 112 exclusion, Section 111(d) regulation of CO₂ emissions from existing sources requires valid regulation of such emissions from new sources under Section 111(b), which requires a separate and valid Section 111 endangerment finding, which does not yet exist.

3. There is no lawful Section 111 endangerment finding for several reasons.

(a) EPA first claimed in the New Source Performance Standard for EGUs under Section 111(b) that it did not need a new endangerment finding because in 1971 it listed “steam generators” and in 1977 listed “stationary gas turbines” as source categories under Section 111. This argument is nonsense because those listings were for different pollutants and for different source categories that had nothing whatsoever to do with GHGs or global warming. Regulation under Section 111 requires an endangerment finding for the particular pollutant in question for the source category in question. The prior listings do not remotely satisfy this requirement.

(b) EPA next argued that the 2009 Section 202(a) Greenhouse Gas (“GHG”) Endangerment Finding for mobile sources (the “2009 EF”) was sufficient for purposes of Section 111 regulation. However, there is a separate Section 111(b) endangerment finding requirement for a reason. There are fundamental distinctions between EGUs and mobile sources, and thus in the statutory endangerment findings required to regulate them. The Section 111 endangerment finding language imposes a higher threshold – that emissions from the source category “significantly contribute” to endangerment. This elevated threshold – previously noted by EPA itself in the 2009 EF – that must be satisfied with a new Section 111 endangerment finding.

(c) As documented by the EPA Inspector General, the 2009 EF failed in multiple respects to comply with the requirements of the Data Quality Act for highly influential scientific assessments. Therefore, EPA cannot lawfully issue the CPP regulation based on the 2009 EF.

(d) EPA next purported to make an all new Section 111(b) endangerment finding. However, merely enumerating the climate assessment literature issued since the 2009 EF is not a proper endangerment finding for such a far-reaching and expensive regulation. Among other things, it fails to even remotely comply with the Data Quality Act for a highly influential scientific assessment. Therefore, EPA cannot rely on the purported endangerment finding in the NSPS Rule for either the CPP or any replacement of the CPP.

Recommendation

The only lawful way to regulate GHG emissions under § 111 is to prepare a proper, HISA-compliant § 111 positive endangerment finding. Until that has been completed, and a lawfully conducted and scientifically robust positive finding returned, the CPP should not be replaced with any regulation at all.

Science Arguments for Rescinding the 2009 Endangerment Finding

The science section of the Comment makes clear that the 2009 EF, claiming GHG/CO₂ emissions were causing dangerous Global Warming, was predicated on three Lines of Evidence that are quite readily specified as hypotheses that can be tested via the scientific method. As challenges to such global warming theories began to emerge, the problem became climate change and then just carbon. But these theories too are subject to hypothesis testing. This Comment's science section IV shows the results of testing both sets of hypotheses.

The 2009 EF's Lines of Evidence are each shown to be invalid. In fact, they are each shown to be invalid using two separate and mathematically distinct approaches that are spelled out in detail in two separate peer reviewed Research Reports. The numerous and distinguished peer reviewers are identified and all statistical work may be readily replicated. The reports were both published on multiple websites frequented by, and free to, climate scientists.

The CHECC petition, which is based on this research work, was also referenced in two recent letters to the EPA Administrator from over 85 highly credentialed scientists. They stated as follows: "We the undersigned are individuals who have technical skills and knowledge relevant to climate science and the GHG Endangerment Finding. We each are convinced that the 2009 GHG Endangerment Finding is fundamentally flawed and that an honest, unbiased reconsideration is in order."

The Comment's science section also presents rebuttals of ten typical climate change alarmists' claims. The authors of these rebuttals are all recognized experts in the relevant scientific fields. The rebuttals demonstrate the falsity of all ten of the claims merely by citing the most credible empirical data on the topic. The ten alarmist claims are as follows:

1. Heat Waves are increasing at an alarming rate and heat kills.
2. Global warming is causing more hurricanes and stronger hurricanes.
3. Global warming is causing more and stronger tornadoes.
4. Global warming is increasing the magnitude and frequency of droughts and floods.
5. Global Warming has increased U.S. Wildfires.
6. Global warming is causing snow to disappear.
7. Global warming is resulting in rising sea levels as seen in both tide gauge and satellite technology.

8. Arctic, Antarctic and Greenland ice loss is accelerating due to global warming.
9. Rising atmospheric CO₂ concentrations are causing ocean acidification, which is catastrophically harming marine life.
10. Carbon pollution is a health hazard.

Details on the Science Arguments summarized above

New Research Findings Make it all but Certain That CO₂ Is not a Pollutant but Rather a Beneficial Gas That Should Not Be Regulated.

On May 8, 2017, the Concerned Household Electricity Consumers Council (CHECC) announced that it filed with EPA a Supplement to its January 20, 2017 Petition based on more new information, again asking the Agency to reconsider the scientifically invalid 2009 EF on which all Obama-era greenhouse gas regulations are based. This Supplement may be found at: <https://thsresearch.files.wordpress.com/2017/05/ef-checc-suppl-pfr-of-ef-050817-final.pdf>.

This first Supplement to the Petition brought to the attention of EPA new developments, since the date of the original Petition, that make the invalidation of the 2009 EF even more definitive. Among the new developments was a new extensively peer reviewed April 2017 Research Report, from Wallace, Christy and D'Aleo (Wallace 2017). Wallace 2017 can be found at: <https://thsresearch.files.wordpress.com/2017/04/ef-data-research-report-second-editionfinal041717-1.pdf>.

Wallace 2017 estimates the impacts of the key natural factors, including solar, volcanic and oceanic/ENSO activity, on tropical and global temperatures. It concludes that once these natural factor impacts on temperature data are accounted for, there is no “natural factor adjusted” warming remaining to be attributed to rising atmospheric CO₂ levels.

That is, these natural factor impacts fully explain the trends in all relevant temperature data sets over the last 50 or more years. This research found that rising atmospheric CO₂ concentrations did not have a statistically significant impact on any of the (14) temperature data sets that were analyzed. Wallace 2017 concludes that, “at this point, **there is no statistically valid proof that past increases in atmospheric CO₂ concentrations have caused what have been officially reported as rising, or even record setting, temperatures.**” *Id.* at pp. 4, 71.

New Research Findings Demonstrate That Adjustments by Government Agencies to the Global Average Surface Temperature Record Render That Record Totally Inconsistent with Published Credible Temperature Data Sets and Useless for any Policy Analysis Purpose.

Next, a second and distinctly different approach was taken that resulted in new highly relevant research findings. On July 6, 2017, CHECC announced that it had filed with EPA a Second Supplement to the its January 20, 2017 Petition again asking the Agency to reconsider the scientifically invalid 2009 EF on which all Obama-era greenhouse gas regulations are based. The Second Supplement to Petition may be found at: <https://thsresearch.files.wordpress.com/2017/07/ef-gast-data-secondsupplementtopetitionfinal.pdf>

The Second Supplement to the Petition relied on a new major peer-reviewed scientific paper from James Wallace, Joseph D'Aleo and Craig Idso, published in June 2017 (Wallace 2017B). Wallace 2017B can be found at: <https://thsresearch.files.wordpress.com/2017/05/ef-gast-data-research-report-062817.pdf>

Wallace 2017B analyzed the Global Average Surface Temperature (“GAST”) data issued by U.S. agencies NASA and NOAA, as well as British group Hadley CRU. In this research report, past changes in the official previously reported historical data were quantified. It was found that each new version of official GAST historical data (e.g., 1880 to 2000) nearly always exhibited a steeper warming linear trend over its entire history. And, this result was nearly always accomplished by each entity systematically removing the previously existing cyclical temperature pattern over this time period. This was true for all three entities providing GAST data measurement, NOAA, NASA and Hadley CRU. However, the magnitude of their historical official data adjustments, that removed the official data’s previous cyclical temperature patterns, are shown in Wallace 2017B to be totally inconsistent with published and highly credible U.S. and other temperature data.

The Second Supplement to Petition states: **“Adjustments that impart an ever-steeper upward trend in the data by removing the natural cyclical temperature patterns present in the data deprive the GAST products from NOAA, NASA and Hadley CRU of the credibility required for policymaking or climate modeling, particularly when they are relied on to drive trillions of dollars in expenditures.”**

The invalidation of the adjusted GAST data knocks yet another essential pillar out from under the lines of evidence that are the claimed foundation of the 2009 EF. As the Second Supplement to Petition further states: **“It is therefore inescapable that if the official GAST data from NOAA, NASA and Hadley CRU are invalid, then both the ‘basic physical understanding’ of climate and the climate models will also be invalid.”** Second Supplement, p. 2.

Numerous Distinguished Climate Scientists “are convinced that the 2009 GHG Endangerment Finding is fundamentally flawed and that an honest, unbiased reconsideration is in order.”

Consistent with the new scientific findings outlined above, on October 16, 2017 and on February 5, 2018, a total of over eighty-five (85) highly credentialed scientists sent a letter to Administrator Pruitt. See: (<https://thsresearch.files.wordpress.com/2017/10/letter-to-pruitt-signed-final-101617.pdf>) and [EF CPP 2nd LT Pruitt - Scientists Final020518](#)).

The letter to the EPA Administrator begins by stating that: “You have pending before you two science-based petitions for reconsideration of the 2009 Endangerment Finding for Greenhouse Gases, one filed by the Concerned Household Electricity Consumers Council, and one filed jointly by the Competitive Enterprise Institute and the Science and Environmental Policy Project.” The letter immediately continues with: **“We the undersigned are individuals who have technical skills and knowledge relevant to climate science and the GHG Endangerment Finding. We each are convinced that the 2009 GHG Endangerment Finding is fundamentally flawed and that an honest, unbiased reconsideration is in order.”**

Ten Frequent Climate Alarmists’ Claims Have Each Been Rebutted by True Experts in Each Field by Simply Citing the Most Relevant and Credible Empirical Data.

The Comment’s science section also presents rebuttals of ten typical climate alarmists’ claims. The authors of these rebuttals are all recognized experts in the relevant scientific fields. The rebuttals demonstrate the falsity of all ten of the listed alarmist claims, most of which were endorsed by the 2009 EF, merely by citing the most credible empirical data on the topic. For each alarmist claim, a link is shown to the full text of the rebuttal and a list of the credentials of the Rebuttal’s authors. The ten alarmist claims are as follows:

1. **Claim: Heat Waves are increasing at an alarming rate and heat kills.**
Detailed Rebuttal and Authors: [EF_RRT_AC - Heat Waves](#)
2. **Claim: Global warming is causing more hurricanes and stronger hurricanes.**
Detailed Rebuttal and Authors: [EF_RRT_AC - Hurricanes](#)
3. **Claim: Global warming is causing more and stronger tornadoes.**
Detailed Rebuttal and Authors: [EF_RRT_CA - Tornadoes](#)
4. **Claim: Global warming is increasing the magnitude and frequency of droughts and floods.**
Detailed Rebuttal and Authors: [EF_RRT_AC - Droughts and Floods](#)
5. **Claim: Global Warming has increased U.S. Wildfires.**
Detailed Rebuttal and Authors: [EF_RRT_AC - Wildfires](#)
6. **Claim: Global warming is causing snow to disappear.**
Detailed Rebuttal and Authors: [EF_RRT_CA - Snow](#)
7. **Claim: Global warming is resulting in rising sea levels as seen in both tide gauge and satellite technology.**
Detailed Rebuttal and Authors: [EF_RRT_CA - Sea Level](#)
8. **Claim: Arctic, Antarctic and Greenland ice loss is accelerating due to global warming.**
Detailed Rebuttal and Authors: [EF_RRT_AC - Arctic, Antarctic, Greenland 123117](#)
9. **Claim: Rising atmospheric CO₂ concentrations are causing ocean acidification, which is catastrophically harming marine life.**
Detailed Rebuttal and Author: [EF_RRT_CA - Ocean pH](#)
10. **Claim: Carbon pollution is a health hazard.**
Detailed Rebuttal and Authors: [EF_RRT_AC - Health](#)

While all are rather easily falsified, these Claims are constantly cited to whip up alarm and create demands for ever tighter regulation of GHG emissions. But there is no evidence to support such claims, and copious empirical evidence that refutes them. The government's regulatory authority over GHG emissions cannot lawfully rest upon a collection of scary stories that are conclusively disproven by readily available empirical data.

Recommendations

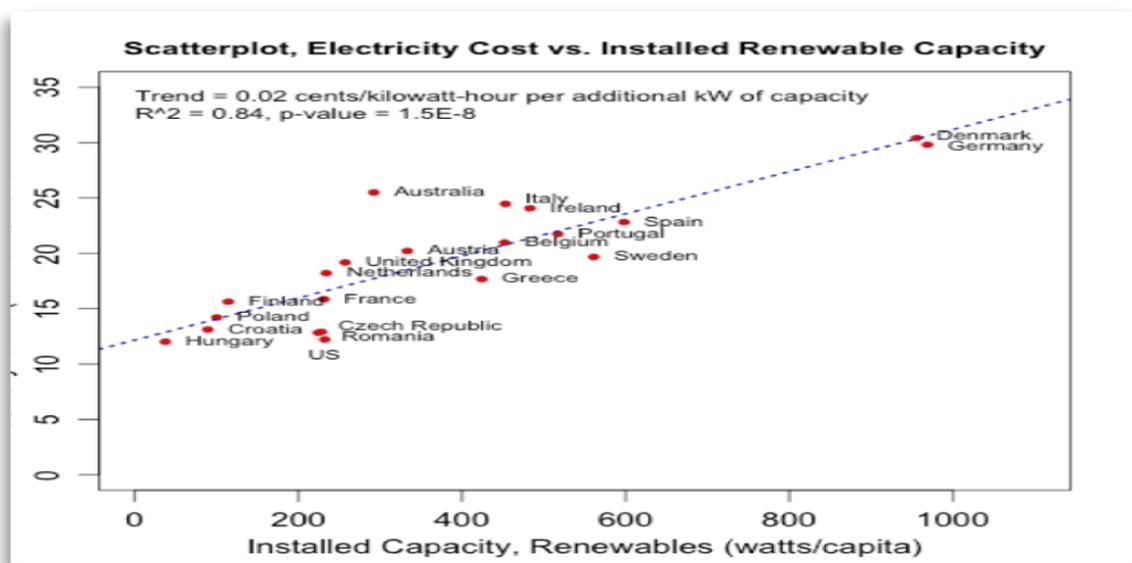
The parade of horrible calamities that the 2009 Endangerment Finding predicts and that a vast program of regulation seeks to prevent have been comprehensively and conclusively refuted by empirical data. The 2009 Endangerment Finding should be rescinded and the Clean Power Plan replaced with nothing at all.

***Energy Economic Argument for Rescinding the 2009 Endangerment Finding:
The CPP Should Not Be Replaced with Anything Because Increasing the
Fraction of Electricity Generation from Intermittent Renewables Causes
Enormous Consumer Electricity Price Increases and Serious Negative
Macroeconomic Impacts.***

Jurisdictions that have succeeded in getting generation from renewables up to as high as about 30% of total electricity supply have experienced about a tripling in the price of electricity to consumers. Getting beyond that 30% level will require prices to multiply by 5 or even 10. Reasons include:

- Need for multiple levels of excess capacity to account for times of low sun and wind.
- Fossil fuel plants must be kept on-line and used for “back-up.”
- To get to higher fractions of renewable generation, storage (e.g., reservoirs, or batteries) must be added at huge cost.
- There is need for additional transmission lines to bring power to places where wind is calm.

California in 2016 got 17.2% of its electricity from wind and solar (vs. 6.5% for U.S. as a whole) and its consumers paid about 50% more per kwh for electricity. As shown in the figure below, Germany, now getting more than 30% of its electricity from renewables, has consumer electricity prices per kwh about triple those in the U.S.



Among large jurisdictions, the one with the highest contribution to electricity generation from wind and solar is South Australia at about 50%. South Australia's consumer electricity prices are the highest in the world. Examples in Section V of the Comment (See p. 26-27) of jurisdictions that have succeeded in increasing the percent of electricity from renewables illustrate the proposition that the more renewables the higher the electricity price, with price increases accelerating as the percent of electricity from renewables gets higher.

A new study by IHS Markit, titled *Ensuring Resilient and Efficient Electricity Generation: The Value of the Current Diverse U.S. Power Supply Portfolio* analyzed the economic effects of state and federal energy policies that are driving electric utilities away from coal, nuclear and hydroelectric and towards renewables and natural gas. Such policies are forecast by IHS Markit to lead to a tripling of the current 7% reliance on wind, solar and other intermittent resources, with natural gas-fired resources supplying the majority of generation.

The Study's Findings are that current policy driven market distortions will lead to: *U.S. power grid becoming less cost-effective, less reliable and less resilient due to lack of harmonization between federal and state policies and wholesale electricity market operations, ... Id.* at p. 4 (Emphasis added).

The study forecast that these policies will cause significant increases in the retail price of electricity. The following economic impacts of these price increases were forecast:

The 27% retail power price increase associated with the less efficient diversity case causes a **decline of real US GDP of 0.8%, equal to \$158 billion** (2016 chain-weighted dollars).

Labor market impacts of the less efficient diversity case involve a reduction of **1 million jobs**.

A less efficient diversity case **reduces real disposable income per household by about \$845 (2016 dollars) annually**, equal to 0.76% of the 2016 average household disposable income."

Id. at p. 5. (Emphasis added).

It should be noted that the Study's projected 27% increase in average retail power prices is predicated on the wind and solar renewables share rising by three-fold from 7% to "only" about 21%. The case studies discussed in the Comment (See p. 26-27) make very clear the enormous increases in power prices that would

result as policy makers attempt to move the renewables share higher than that. Moreover, the study found that policies that promote increased use of wind and solar would likely result in little to no reduction in the level of electric sector CO₂ emissions.

Recommendations

Based on the Comment's science arguments above, the 2009 Endangerment Finding should be rescinded. Furthermore, the CPP should not be Replaced with anything because increasing the fraction of electricity generation from Intermittent Renewables will cause (1) enormous consumer electricity price increases, (2) the Grid to become even less reliable and less resilient, and (3) *even more* serious negative macroeconomic impacts but would have zero impact on the climate. Based on the Comment's science arguments, this would be true whether or not the CPP Replacement managed to significantly reduce U.S. CO₂ emissions from any and all sources.

SUMMARY OF RECOMMENDATIONS

Based on the Legal Analysis: The CPP should not be replaced with anything at all until a lawful, scientifically robust, HISA-compliant positive endangerment finding has been made. The 2009 EF analysis process was fundamentally flawed requiring that it must be rescinded and reconsidered.

Based on the Science Analysis: The scientific basis for the 2009 Endangerment Analysis has been invalidated – twice in fact. Hence, a GHG endangerment reconsideration is highly unlikely to yield a new endangerment finding. And, thus CPP replacement would have no legal basis and then should not be replaced.

Based on the Energy Economic Analysis: The current Federal, State and private sector policies that are now increasing the fraction of electricity generation from Intermittent Renewables must be stopped/reversed in order to avoid/mitigate very severe micro and macroeconomic impacts and National Security ramifications.

Other Ramifications of the Legal, Science and Energy Economics Findings

- No consumer electricity price increases should be permitted by regulators that result from increased Renewables/Energy Storage Grid penetration.
- The currently pending Reconsideration of future vehicle MPG Standards should treat CO₂ reduction as a cost, not a benefit, so that only consumer preferences matter, not climate change issues. Given their current gasoline price expectations, consumers now prefer trucks & SUVs.