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**COMMENT OF THE CONCERNED HOUSEHOLD
ELECTRICITY CONSUMERS COUNCIL ON EPA'S
REVIEW OF STANDARDS OF PERFORMANCE FOR
GREENHOUSE GAS EMISSIONS FROM NEW, MODIFIED,
AND RECONSTRUCTED STATIONARY SOURCES:
ELECTRIC UTILITY GENERATING UNITS**

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This comment is submitted through counsel by the Concerned Household Electricity Consumers Council (“CHECC”). CHECC is a group of homeowners concerned about the dramatic increases in the costs of household electricity brought about by the government-mandated shift of electricity generation from inexpensive and reliable fossil fuels to expensive and unreliable “renewables” like wind and solar. CHECC receives no funding from anyone, and the work of its members and counsel on this comment and all previous submissions and filings with the EPA is entirely *pro bono*.

I. INTRODUCTION

On December 20, 2018, EPA published its proposed “Review of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units” (the “2018 NSPS Rule”). 83 FR 65424. The 2018 NSPS Rule is intended to revise a proposed rule for electric generating units proposed by the Obama Administration on October 23, 2015 entitled “Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units (EGUs),” (the “2015 NSPS Rule”), published at 80 FR 64510.

The 2018 NSPS Rule is a companion to the Affordable Clean Energy (“ACE”) Rule, published August 31, 2018. 83 Fed. Reg. 44,746. The ACE Rule is intended to replace the Obama Administration’s Clean Power Plan (“CPP”), published at 80 FR 64662 (October 23, 2015).

As explained below, CHECC contends that EPA should withdraw the 2015 and 2018 NSPS Rules and replace them with nothing at all for the following reasons:

1. Section II shows that a separate and valid Section 111 endangerment finding is required in order to regulate GHGs emissions from new EGUs, and none has yet been adopted.

2. Section II also shows that EPA may not legally rely on the 2009 Section 202(a) Greenhouse Gas (“GHG”) Endangerment Finding for mobile sources (the “2009 EF”) to regulate GHG emissions under Section 111, and that neither the 2009 EF nor the cursory endangerment finding in the 2015 NSPS Rule complies with the Data Quality Act.
3. Section III shows there are powerful scientific reasons the 2009 EF should be reconsidered, which apply with even greater force to the cursory Section 111 endangerment finding in the 2015 NSPS Rule.
4. Section IV shows that any GHG regulation that drives higher grid penetration for “renewable” energy sources – wind and solar – will cause enormous increases in the cost of electricity, causing substantial economic harm to everyone in America.
5. Section V shows that the ongoing war on fossil fuels through regulations and litigation arising from the 2009 EF gravely threatens U.S. strategic, national security and economic interests, as well as President Trump’s Energy Dominance Agenda.

II. THERE IS NO LAWFUL SECTION 111 ENDANGERMENT FINDING.

In the 2018 NSPS Rule, EPA adopted arguments set out in the 2015 NSPS Rule that set out what can be called a layered defense of its position on the Section 111 endangerment finding issue. It claimed (1) that no new endangerment finding was required because it had made one for the same source category (but not the same pollutant) many years ago; (2) if a new endangerment finding were required, it could adopt the 2009 Endangerment Finding for mobile sources lock, stock and barrel; and (3) if that was not sufficient, it was making the requisite finding for Section 111 purposes by then and there declaring it to be so. None of these arguments withstands scrutiny.

A. EPA CANNOT RELY ON SOURCE CATEGORY FINDINGS FOR DIFFERENT POLLUTANTS FROM DIFFERENT SOURCE CATEGORIES ADOPTED IN 1971 AND 1977.

EPA’s first argument was that it previously made an endangerment finding for related source categories many years ago, and that it therefore need not make a new one for GHG emissions from EGUs. This is without merit for two reasons: first, rational regulation of air pollutants by definition requires an endangerment finding for each pollutant rather than a blanket catch-all for everything emitted by the category, and second, the source categories were different.

In the 2015 NSPS Rule, EPA merged the previous source categories created in 1971 and 1977 into a brand new “fossil-fueled fired EGU” category:

In this rule, the EPA is combining the steam generator and combustion turbine categories into a single category of fossil fuel-fired electricity generating units for purposes of promulgating standards of performance for GHG emissions.

80 Fed. Reg. at 64531. EPA takes the same position in the 2018 NSPS Rule. The prior listings were in 1971 for “steam generators,” 36 Fed. Reg. 5931 (3/31/71) and in 1977 for “stationary gas turbines.” 42 Fed. Reg. 53657 (10/3/77).

The issues considered in these prior “findings,” could hardly have been any more disconnected from worries about GHG emissions. Nevertheless, invoking *Chevron* deference, EPA argued in the 2015 NSPS Rule and agreed in the 2018 NSPS Rule that the prior listing of these two source categories authorized it to thereafter commence regulation of any pollutant emitted by EGUs, including GHGs, without any separate finding that the particular pollutant being regulated actually caused endangerment.

EPA’s expansive reading of its own authority grants itself a limitless blank check to regulate anything emitted by a listed source category, whether it causes any endangerment or not. Given the “capacious”¹ definition of “air pollutant” in § 302(g) of the Clean Air Act, “any substance ... emitted into the ambient air,” “anything from Frisbees to flatulence,”² some limiting principle is essential; otherwise EPA could regulate emissions of water vapor or even air itself.

The limiting principal is that of rational regulation of particular pollutants by reference to a standard of concentration that causes harm. Contrary to EPA’s self-interested interpretation, stationary sources are regulated under § 111(d) via “standards of performance” issued under § 111(b)(1)(B). In turn, a “standard of performance” is defined in Section 111(a)(1) as “a standard for emissions of air pollutants.”

It is not possible to know how to set a § 111 performance standard for a pollutant without knowing whether and to what extent it “significantly” contributes to “endangerment.” A logical requisite of rational regulation is having some clue as to what, whether and how much to regulate – all of which is supplied by a proper § 111

¹ *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007)

² *Massachusetts v. EPA*, 549 U.S. 497 (Scalia, J., dissenting, at 558, fn. 2 (“It follows that *everything* airborne, from Frisbees to flatulence, qualifies as an ‘air pollutant.’ This reading of the statute defies common sense.”

endangerment finding for a particular pollutant, and none of which is supplied by the mere listing of the source category.

The breadth of EPA's claimed authority is striking. In both the 2015 NSPS Rule and the 2018 NSPS Rule, EPA contends that the Section 111 endangerment findings for the 1971 and 1977 source categories cover the merged category of EGUs, and further covers any pollutants emitted by the merged category even if they were previously unregulated. "First, because the EPA is not listing a new source category in this rule, the EPA is not required to make a new endangerment finding with regard to affected EGUs in order to establish standards of performance for the CO₂ emissions from those sources." 80 Fed. Reg. at 64530. "[T]he statute is clear that the endangerment finding is made with respect to the source category; section 111(b)(1)(A) does not provide that an endangerment finding is made as to specific pollutants." *Id.* at 64531. To bridge the distinctions between the prior categories and the new category, EPA adopted the regulatory equivalent of a Trinitarian doctrine – "steam generators," "stationary gas turbines" and "fossil fuel-fired EGUs" are three in one and one in three – a triune source category. While a supernatural fusion of entities may be permissible for matters of faith, it is not permissible for matters of law.

Finally, neither the one-liner "finding" in 1971 for "steam boilers" nor the 1977 finding for stationary gas turbines applied to GHGs. Nor did either remotely comply with the requirements of the Data Quality Act. Pub.L. 106-554. OMB defines a "Highly-Influential Scientific Assessment" ("HISA") as follows:

III. 1. Applicability: This section applies to influential scientific information that the agency or the Administrator determines to be a scientific assessment that:

- (i) Could have a potential impact of more than \$500 million in any year, or
- (ii) Is novel, controversial, or precedent-setting or has significant interagency interest.

70 Fed. Reg. 2664, 2675:3 (1/14/05). If the prior 1971 and 1977 "findings" on which EPA now relies are deemed sufficient for purposes of § 111(b), then relying upon them for the ACE and the 2018 NSPS Rule certainly meets the threshold of having an economic impact greater than \$500 million, or of being novel, controversial or precedent-setting or having significant interagency interest, any of which clearly triggers application of

HISA requirements.³ Of course, the prior “findings” do not apply to GHGs, and cannot possibly meet HISA requirements. Therefore, EPA cannot enact the 2018 NSPS Rule relying on these aged and scientifically irrelevant findings that say nothing whatsoever about GHGs or global warming.

B. EPA CANNOT RELY ON THE 2009 ENDANGERMENT FINDING FOR MOBILE SOURCES

EPA’s second line of defense in the 2015 and 2018 NSPS Rules was that it could adopt the 2009 Endangerment Finding for mobile sources (the “2009 EF”) for all purposes necessary under § 111. This argument is without merit.

First, the fact that Congress saw fit to enact a separate and distinct endangerment finding requirement for § 111 is compelling proof that EPA cannot willy-nilly adopt endangerment findings made for different purposes under a separate title of the Act. If Congress had intended for a single endangerment finding under one title to support regulation under every title and regulatory program of the Act, it would have said so, and would not have bothered to adopt separate endangerment finding provisions in § 111, § 202(a), § 211(c)(1) and § 231(a)(2)(A). Stationary sources are fundamentally different from automobiles, and Congress’ expressly distinct treatment of the two cannot be lawfully ignored by importing the 2009 EF for mobile sources into stationary source regulation.

EPA itself has recognized that a § 111 endangerment finding must meet a higher threshold than a § 202 finding. Under § 111, the source category must “cause or contribute *significantly*” to air pollution that endangers human health and welfare. EPA made this point itself in the 2009 EF, emphasizing how little endangerment was required by § 202(a) as compared to the elevated threshold of § 111:

Moreover, the statutory language in CAA section 202(a) does not contain a modifier on its use of the term contribute. Unlike other CAA provisions,

³ The ACE Rule Regulatory Impact Analysis measures costs relative to a base case which assumes the CPP were in effect. Even so, compliance costs exceed \$500 million in the vast majority of scenarios. *See* Regulatory Impact Analysis for ACE Rule, pp. ES-6, 1-16, 3-18, Tables 1-4, and 3-11. Table 3-12 shows Annualized Compliance Costs, Relative to No CPP Scenario exceed \$500 million annually in 8 out of 12 scenarios. *See* https://www.epa.gov/sites/production/files/2018-08/documents/utilities_ria_proposed_ace_2018-08.pdf.

it does not require “significant” contribution. *See, e.g.,* CAA sections 111(b); 213(a)(2), (4).

74 Fed., Reg. 66506:1. EPA cannot pretend in the 2015 and 2018 NSPS Rules that there is no difference between the endangerment finding provisions of § 111 and § 202 after having urged those distinctions itself to defend the § 202 finding.

C. THE 2009 ENDANGERMENT FINDING DID NOT COMPLY WITH THE REQUIREMENTS FOR HIGHLY INFLUENTIAL SCIENTIFIC ASSESSMENTS.

EPA cannot rely on the 2009 EF in the 2018 NSPS Rule, the 2015 NSPS Rule, the CPP or the ACE Rule because the 2009 EF failed to comply with HISA requirements.

The 2009 EF relies on its accompanying the Technical Support Document (“TSD”). The 2009 EF and TSD were found by the EPA Inspector General to constitute a Highly Influential Scientific Assessment: “We interpreted OMB’s guidance to indicate that the TSD was a highly influential scientific assessment.”⁴

The Inspector General then found that EPA did not meet the applicable requirements for HISAs in several respects:

We interpreted OMB’s guidance to indicate that the TSD was a highly influential scientific assessment. **EPA’s peer review did not meet all OMB requirements for such documents.** EPA had the TSD reviewed by a panel of 12 federal climate change scientists. However, **the panel’s findings and EPA’s disposition of the findings were not made available to the public as would be required for reviews of highly influential scientific assessments.** Also, this panel **did not fully meet the independence requirements** for reviews of highly influential scientific assessments because one of the panelists was an EPA employee. Further, in developing its endangerment finding, we found that OAR did not:

- Include language in its proposed action, final action, or internal memoranda that identified whether the Agency used influential scientific information or highly influential scientific assessments to support the

⁴ See <https://www.epa.gov/office-inspector-general/report-procedural-review-epas-greenhouse-gases-endangerment-finding-data>, last visited February 19, 2018, p. 13.

action. OAR also did not certify that the supporting technical information was peer reviewed in accordance with EPA's peer review policy.

- Prepare a complete analytic blueprint outlining its approach for reviewing the technical data needed to support its action as recommended by the Agency's action development process. OAR also did not follow some of the procedural guidelines in EPA's action development process

Id. (Emphasis added). The failure of the 2009 EF to meet HISA requirements is plain and obvious, and occurred in many dimensions.

In response to the Inspector General's report, the EPA claimed that HISA requirements did not apply to the TSD because "they did not consider the TSD a scientific assessment." *Id.* They claimed instead that the TSD "consisted only of science that was previously peer reviewed," and that "the Administrator primarily relied upon assessments conducted by other organizations rather than the TSD, which summarizes the findings and conclusions of these other assessments." *Id.*

EPA took this position with the Inspector General to avoid the fatal consequences to the 2009 EF that would have ensued if it were subject to HISA requirements that it obviously did not meet. Yet this was the exact opposite of the position EPA took in denying petitions for reconsideration of the 2009 EF and in the concurrent D.C. Circuit litigation over the 2009 EF.

When EPA denied the Petitions for Reconsideration of the 2009 EF it said:

It is useful to describe the process EPA followed in exercising its scientific judgment in making the Endangerment Finding. EPA did not passively and uncritically accept a scientific judgment and finding of endangerment supplied to it by outsiders. Instead, EPA evaluated all of the scientific information before it, determined the current state of the science on greenhouse gases, the extent to which they cause climate change, how climate change can impact public health and public welfare, and the degree of scientific consensus on this science. EPA applied this science to the legal criteria for determining endangerment, i.e., whether greenhouses gases cause, or contribute to, air pollution that may reasonably be anticipated to endanger public health or welfare. ... **EPA properly and carefully exercised its own judgment in all matters related to the Endangerment Finding.**

Denial of Petitions for Reconsideration, 75 Fed. Reg. 49,556, 49,581 (Aug. 13, 2010) (emphasis added).

The question of whether the Administrator had exercised independent judgment was presented in *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). The Petitioners argued that the 2009 EF was invalid because the Administrator had simply adopted the reports of the IPCC without exercising her independent judgment as required by § 202. *See* Non-State Petitioners' Opening Br. at 33 ("The Administrator Made No Independent Judgment"); 42-43 ("Section 202(a) unequivocally requires the Administrator to make an endangerment determination. In this case the Administrator did not do so, ... but instead pointed to preexisting 'assessment literature' that supported the conclusions she had already reached.") In response to the Petitioners' argument, EPA claimed to the D.C. Circuit, as it did in denying the petitions for reconsideration, that the Administrator *had* exercised independent judgment: "Although the scientific assessments reviewed by EPA provided the principal source materials for the Endangerment Finding, the Administrator exercised her own judgment in making that Finding." EPA Brief at 37.

The D.C. Circuit resolved the independent judgment question in EPA's favor: "Moreover, it appears from the record that EPA used the assessment reports not as substitutes for its own judgment but as evidence upon which it relied to make that judgment." *Coalition for Responsible Regulation v. EPA*, 684 F.3d. 102, 120 (D.C. Cir. 2012) *aff'd in part, and rev'd in part sub. nom. Utilities Air Regulatory Group v. EPA*, 134 S.Ct. 2427 (2014).

Since the D.C. Circuit held that EPA *had* exercised independent judgment in adopting the 2009 EF, the inconsistency of EPA's positions on the question is resolved, and the applicability of HISA requirements is beyond question.⁵ Equally inescapable is EPA's failure to meet those requirements.

EPA cannot ground the 2015 NSPS Rule, the 2018 NSPS Rule, the CPP or the ACE Rule on the 2009 EF because of its extensive and thoroughly documented failure to comply with HISA requirements.

⁵ The D.C. Circuit did not consider whether the 2009 EF was a Highly Influential Scientific Assessment, having rejected a motion to bring that issue before the Court.

D. THE 2015 NSPS RULE’S PURPORTED NEW ENDANGERMENT FINDING IS NOT HISA-COMPLIANT.

EPA’s last line of defense in the 2015 and 2018 NSPS Rules is to say that if a new § 111 endangerment finding were required, it was then and there making one, relying on the 2009 EF and subsequently issued assessment literature identified in the 2015 NSPS Rule. 80 Fed.Reg. at 64530:3. The 2018 NSPS Rule and the ACE Rule, as outlined above, will obviously trigger the data quality requirements for highly influential scientific assessments through their reliance on this “finding.” EPA’s arm-waving at the assessment literature in the 2015 NSPS Rule does not even remotely comply with HISA requirements. Therefore, EPA cannot rely on the purported endangerment finding in the 2015 NSPS Rule for either the 2018 NSPS Rule, the CPP or the ACE Rule. 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 2015 and 2018 NSPS Rules should be withdrawn and not replaced with any regulation at all.

III. THE 2009 ENDANGERMENT FINDING SHOULD BE RECONSIDERED.

In this section we present evidence that the 2009 EF has been invalidated on its merits, which is an additional category of reasons the 2015 NSPS Rule should simply be withdrawn and not replaced with the 2018 NSPS Rule.

A. THE VALIDITY OF THE 2009 EF IS RELEVANT TO THIS RULE.

As legal authority for the ACE Rule, EPA explicitly relies on the endangerment finding in the 2015 NSPS Rule, stating as follows:

That CAA section 111(b) rulemaking [the 2015 NSPS endangerment finding] remains on the books, although EPA is currently considering revising it. Accordingly, it continues to provide the requisite predicate for applicability of CAA section 111(d). Any comments on the issues discussed in this subsection would be more appropriately addressed to the docket on EPA’s intended forthcoming proposal with regard to the new source rule.

83 Fed. Reg. 44,751-44,752. The “issues discussed in this subsection” were EPA’s legal authority to regulate Greenhouse Gas (“GHG”) emissions from Electric Generating Units (“EGUs”), which rests in part on the Section 111(b) endangerment finding for GHGs in the 2015 NSPS Rule. Thus, in the ACE Rule, EPA deflected to this docket any

comment on its legal authority to regulate GHG emissions from EGUs, which necessarily includes the sufficiency of the endangerment finding in the 2015 NSPS Rule.

In the 2018 NSPS Rule, EPA again relied on the endangerment finding in the 2015 NSPS Rule, and in footnote 25 invited comment as follows:

25 The EPA is proposing to retain the statutory interpretations and record determinations described in this paragraph [the 2015 NSPS endangerment finding]. Nonetheless, the EPA is aware that various stakeholders have in the past made arguments opposing our views on these points, and the Agency sees value to allowing them to comment on these views in this rulemaking. Accordingly, the Agency will consider comments on the correctness of the EPA's interpretations and determinations and whether there are alternative interpretations that may be permissible, either as a general matter or specifically as applied to GHG emissions. For example, the Agency will consider comments on the issue of whether it is correct to interpret the "endangerment finding" as a finding that is only made once for each source category at the time that the EPA lists the source category or whether the EPA must make a new endangerment finding each time the Agency regulates an additional pollutant by an already-listed source category. Further, the EPA will consider comments on the issue of whether GHG emissions are different in salient respects from traditional emissions such that it would be appropriate to conduct a new "endangerment finding" with respect to GHG emissions from a previously listed source category. In addition, the EPA solicits comment on *whether the Agency does have a rational basis for regulating CO₂ emissions from new coal-fired electric utility steam generating units and whether it would have a rational basis for declining to do so at this time*, in light of, *among other things*, the following: (i) ongoing and projected power sector trends that have reduced CO₂ emissions from the power sector, EIA, *Annual Energy Outlook 2018 with projections to 2050* (February 6, 2018), at 102, available at <https://www.eia.gov/outlooks/aeo/pdf/AEO2018.pdf>, due to reduced coal-fired generation, as the EPA discusses in the proposed Affordable Clean Energy rule, 83 FR 44746, 44750-51 (August 31, 2018); and (ii) as noted above, no more than a few new coal-fired EGUs can be expected to be built, which raises questions about whether new coal-fired EGUs contribute significantly to atmospheric CO₂ levels.

(Emphasis added). Despite the cryptic and byzantine complexity of this language, it nevertheless obviously invites “comment on *these views* in this rulemaking,” with “*these views*” being the statement in the sentence to which the footnote is attached that “EPA added that even if it were required to make an endangerment finding for those emissions in order to regulate them, the same facts that provided the rational basis would qualify as an endangerment finding.” Thus, the footnote explicitly invites comments on whether the agency has a rational basis to regulate or not regulate GHG emissions from EGUs.

Yet in a press conference announcing the 2018 NSPS Rule, EPA’s then-Assistant Administrator for Air and Radiation, Mandy Gunasekara, suggested comment would not be taken on endangerment finding issue:

Reporter: The proposal specifically asks for comment on the endangerment finding and whether it actually applies to coal-fired power plants under this category. It says it might not necessarily apply to new sources.

Wheeler: I’ll have Mandy answer that.

Mandy Gunasekara, assistant administrator for EPA’s Office of Air and Radiation: The proposal doesn’t take comment on the endangerment finding, it takes comment on the threshold issue of contribution. And under Section 1 of the Clean Air Act [inaudible], that comes to a contribution factor that is requisite in terms of triggering [inaudible]. So under Title 1 of the Clean Air Act, there is [a] significance requirement, and we are asking about that particular issue.

This attempt to limit the scope of comment by means of an answer to a question at a press conference should be rejected. Fundamental principles of notice and comment rulemaking require that the scope of comment be determined by the text of the published proposed rule and not by statements at a press conference.

B. SCIENCE ARGUMENTS FOR WITHDRAWING THE 2015 AND 2018 NSPS RULES.

In this section we present science-based evidence that the 2009 EF has been invalidated on its merits, which is an additional category of reasons that the 2015 and 2018 NSPS Rules should be withdrawn.

**1. THE 2009 ENDANGERMENT FINDING SHOULD BE
RECONSIDERED BECAUSE THE THREE LINES OF EVIDENCE
ON WHICH IT IS BASED HAVE BEEN INVALIDATED.**

EPA's Endangerment Finding appears at 74 C.F.R., page 66,495, *et seq.* At page 66,518 EPA sets forth the three "lines of evidence" upon which it says it has attributed "observed climate change" to "anthropogenic activities," thus providing the basis for the Finding that human GHG emissions endanger human health and welfare:

The attribution of observed climate change to anthropogenic activities is based on multiple lines of evidence. The **first line of evidence** arises from our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system. The **second line of evidence** arises from indirect, historical estimates of past climate changes that the changes in global surface temperature over the last several decades are unusual. The **third line of evidence** arises from the use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic).

(Emphasis added).

More information about the nature of each of the three "lines of evidence" can be gleaned from EPA's further elaboration in the Endangerment Finding itself and the associated Technical Support Document.

By the first "line of evidence," ("our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system"), EPA is referring to its "greenhouse gas fingerprint" or "tropical hot spot" ("Hot Spot") theory, which is that in the tropics, the upper troposphere is warming faster than the lower troposphere and the lower is warming faster than the surface, all due to rising atmospheric greenhouse gas concentrations blocking heat transfer into outer space. By this mechanism, increasing greenhouse gas concentration is assumed to increase surface temperatures.

The second "line of evidence" ("indirect, historical estimates of past climate changes that suggest that the changes in global surface temperature over the last several decades are unusual") refers to EPA's claim that global average surface temperatures have been rising in a dangerous fashion over the last fifty years or so.

The third “line of evidence” (“use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic)”) consists of EPA’s reliance on climate models (not actually “evidence”) that assume that greenhouse gases are a key determinant of climate change. EPA uses climate models for two purposes: to “attribute” warming to human GHG emissions, and to set regulatory policy for such emissions based on their modeled impact on global temperatures.

As shown below, recent research has shown that EPA’s first line of evidence, the claimed basic physical understanding of the climate system, is invalidated by empirical data showing that a core premise and prediction of that understanding – the existence of a characteristic “Hot Spot” in the tropical upper troposphere – simply does not exist in nature.

It has been contended by some that invalidation of the Hot Spot has no particular significance because it was not expressly identified in EPA’s enumeration of the three lines of evidence. This is incorrect because even though the Hot Spot was not specifically identified as one of the three lines of evidence, there can be no question that it is a critical and necessary component of the “physical understanding” of climate that EPA claims as the foundational line of evidence supporting the Endangerment Finding.⁶

EPA itself previously acknowledged in the TSD for the 2009 EF that if the Hot Spot were missing it would be “an important inconsistency.” TSD p. 50.

The Climate Change Science Program, Synthesis and Assessment Product 1.1, on which EPA placed primary reliance, likewise conceded that if the Hot Spot were missing it would be a “*potentially serious inconsistency*.” See S.A.P. § 1.1, p. 11. <https://downloads.globalchange.gov/sap/sap1-1/sap1-1-final-all.pdf>.

The research discussed below proves that a fatal inconsistency between a key theory and observations has in fact been demonstrated.

⁶ The dependence of the physical understanding of the climate line of evidence on the validity of the Hot Spot, as documented in the assessment literature, is set forth in detail in CHECC’s original Petition for Reconsideration of the 2009 EF, at pp. 10-13. See <https://thsresearch.files.wordpress.com/2017/04/ef-epa-petitionforreconsiderationof-ef-final-1.pdf>, which is incorporated herein by reference.

2. 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 January 20, 2017, CHECC submitted a Petition to EPA, (See: <https://thsresearch.files.wordpress.com/2017/04/ef-epa-petitionforreconsiderationof-ef-final-1.pdf>) requesting that it revisit and revoke the Endangerment Finding because that Finding had been scientifically invalidated. The Petition provided new information that demonstrated that the Endangerment Finding was nothing more than a scientific hypothesis that had been disproved by the best empirical evidence from the real world.

The Endangerment Finding is the fundamental foundation on which all greenhouse gas policy and regulation rest, including the Clean Power Plan, and now the ACE Rule and NSPS Proposals. The Endangerment Finding purported to “find” that human-generated greenhouse gases, including carbon dioxide, constitute a “danger” to human health and welfare because of their effect in warming the atmosphere. However, the Endangerment Finding has been invalidated, and with it the foundation for regulation. As a result, there exists *no* scientific basis for any of greenhouse gas-restricting policies or regulations.

The CHECC Petition to EPA was based in part on the September 21, 2016 Research Report by Dr. James P. Wallace III, Dr. John R. Christy and Dr. Joseph S. D’Aleo (Honorary). That Report demonstrated by clear scientific proof the invalidation of each of the three lines of evidence on which EPA relied in the Endangerment Finding to attribute global warming to human emissions of greenhouse gases. The Research Report can be found at:

<https://thsresearch.files.wordpress.com/2016/09/ef-cpp-sc-2016-data-ths-paper-ex-sum-090516v2.pdf>.

This Research Report was peer-reviewed by seven eminent and highly qualified scientists, engineers and economists, all of whom agreed with its conclusion. Those conclusions are definitive and unequivocal. As stated in the Research Report itself, *“[T]his analysis failed to find that the steadily rising atmospheric CO₂ concentrations have had a statistically significant impact on any of the 13 critically important temperature time series data analyzed.”*

In testimony before Congress on March 29, 2017, Dr. John Christy reiterated the key findings of the Research Report, stating:

*The IPCC climate models performed best versus observations when they did **not** include extra GHGs [anthropogenic greenhouse gases]. . . . The basic result of this report is that the temperature trend of several datasets since [1959] 1979 can be explained by variations in the components that naturally affect the climate [that is, excluding anthropogenic greenhouse gases] ...*

(Emphasis added).

Then, on May 8, 2017, CHECC announced that it filed with EPA a Supplement to the Council's January 20, 2017 Petition based on more new information, asking the Agency to reconsider the scientifically invalid Endangerment Finding 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 Endangerment Finding even more definitive. First among the new developments is a new extensively peer reviewed April 2017 Research Report, also 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 takes a totally different analytical approach (e.g., being far more explicit in its choice of explanatory variables) than Wallace 2016, and more specifically estimates the impacts of the key natural factors, including solar, volcanic and oceanic/ENSO⁷ 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 basic variations and trends in all relevant temperature data sets over the last 50 or more years. This research, like Wallace (2016), 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**

⁷ El Niño Southern Oscillation ("ENSO").

been officially reported as rising, or even record setting, temperatures.” *Id.* at pp. 4, 71.

The first Supplement to the Petition also points out the improper use of climate models relied upon by EPA in the attribution of warming to human-related CO₂ emissions. As extensively documented with citations to the assessment literature and the TSD in the first Supplement, the key premise of using climate models in attribution is that such climate models have been properly validated, including proof that the models are likely to provide reliable temperature forecasts of impacts of rising CO₂ emissions. This includes an explicit requirement that the climate modelers be unable to reproduce observed temperature patterns without the additional forcing from anthropogenic GHGs. See First Supplement, pp. 3-5.

Wallace (2016) and Wallace (2017) both independently demonstrate that this key premise is false. Both reports show that natural factors alone explain the basic data variation and any warming trend. Conversely, climate models (tuned to fit official Global Average Surface Temperature (GAST) data) show a pattern of warming in the tropical troposphere that simply does not exist in nature—the missing tropical Hot Spot. Thus, the climate models have been invalidated and cannot be relied upon by EPA for attribution analysis in its Endangerment Finding⁸. Therefore, the fundamental principles of science preclude the use of invalidated climate models to attribute warming to human emissions of GHGs, and requires reconsideration of the Endangerment Finding.

The first Supplement to the Petition also puts in the record before EPA information from the March 29, 2017 testimony of John Christy before Congress which also dealt with the missing tropical Hot Spot issue. Dr. Christy’s testimony can be found at:

<https://notalotofpeopleknowthat.files.wordpress.com/2017/11/hhrg-115-sy-wstate-jchristy-20170329.pdf>

⁸ It should be noted here that Wallace 2017, p. 14 states the following: “Unlike some research in this area, this research does not attempt to evaluate the existence of the THS [Tropical Hot Spot] in the real world by using the climate models. This would constitute a well-known error in mathematics and econometrics in that such climate models obviously must include all relevant theories, possibly including some not even known today; many, if not all, of which could impact tropical temperatures. Thus, it is never mathematically proper to attempt to validate any theory {in this case, the THS theory} embedded in a model using the model itself. Each such theory needs to be tested outside of the model construct.” In short, EPA’s approach to attribution analysis is itself fundamentally flawed.

Dr. Christy's Congressional testimony showed that the linear trend in the tropical troposphere temperature data depicted by climate models on which EPA relies, differs from the trend of actual observations at the 99% confidence level. *Id.*, at pp. 9-10. In other words, when the climate models are tuned to fit what will be shown below to be fabricated GAST data, the magnitude of the THS required is not consistent with real world data. Thus, the models used by EPA to conclude that greenhouse gases pose a "danger" to human health and welfare have again failed a simple "scientific method" test. They have been invalidated.

3. 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.

On July 6, 2017, CHECC announced that it had filed with EPA a Second Supplement to the its January 20, 2017 Petition asking the Agency to reconsider the scientifically invalidated Endangerment Finding on which all Obama-era greenhouse gas regulations are based. The Second Supplement to the 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 third 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 previously reported historical data were quantified. It was found that each new version of GAST had 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. This was true for all three entities providing GAST data measurement, NOAA, NASA and Hadley CRU.

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 climate modeling and therefore, policymaking - particularly when such policies are relied on to drive trillions of dollars in expenditures.”

Moreover, 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 Endangerment Finding. 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.

With the Global Average Surface Temperature data now shown to be a worthless depiction of reality, new research was focused on testing the same hypotheses using the very best global tropospheric temperature data available.

On March 1, 2019, CHECC announced that it had filed with EPA a Sixth Supplement to its January 20, 2017 Petition asking the Agency to reconsider the scientifically invalidated Endangerment Finding on which all Obama-era greenhouse gas regulations are based. Specifically, CHECC and its members submitted a Sixth Supplement to their Petition, based on a May 2018 Research Report by Dr. James P. Wallace III, Dr. Joseph S. D’Aleo (Honorary) and Dr. Craig D. Idso, titled *Comment on “Examination of space-based bulk atmospheric temperatures used in climate research” by Christy et al (2018), Research Report, Third Edition, May, 2018* (Wallace 2018). This report (Wallace 2018) is available at [EF DATA Comment on Christy et al Paper Final 042818V4](#) and is incorporated herein by reference.

This recently released peer reviewed and published research report (Wallace 2018) has once again proven that it is all but certain that EPA’s basic claim that CO₂ is a pollutant is totally false.

This research was carried out using as its temperature data the UAH TLT 6.0 atmospheric temperature data gathered via satellite. UAH data has been clearly shown to be the very best data available⁹. Wallace 2018 involved the use of mathematical methods of econometrics specifically designed for structural analysis of time series data. These methods have been demonstrated to be highly credible when applied to data such as the UAH temperature data.¹⁰

⁹ See: <https://www.tandfonline.com/doi/full/10.1080/01431161.2018.1444293>

¹⁰ See: <https://thsresearch.files.wordpress.com/2017/04/ef-data-research-report-second-editionfinal041717-1.pdf>, for structural analysis methodology see Preface, pages 7-12

The Christy et al (2018) paper discussed in Wallace 2018 does mathematically derive a linear temperature trend having a positive slope parameter estimate that is lower than that obtained by other researchers. However, quite properly, Christy et al (2018) does not claim that this particular research report finding implies anything whatsoever regarding a proof that CO₂ has had a statistically significant impact on the Earth's temperature over the last 50 years or so⁵.

Wallace 2018 argues that this statistical significance issue must be addressed using appropriate mathematical methods. Such methods are once again used in this new research and prove that the increasing atmospheric CO₂ concentrations did not have a statistically significant impact on the UAH TLT 6.0 temperature data set over the period 1979 to 2016.

In fact, Wallace 2018 demonstrated that there was a "Pause" in UAH TLT temperature trend increases (i.e., the underlying linear trend was flat) over the 1995 to 2016 period. This is a time period during which atmospheric CO₂ concentrations increased by over 12.0%.

Moreover, based on a well-known solar activity forecast (Abdussamatov 2015¹¹) and specific assumptions on the other natural explanatory variables (i.e., volcanic and oceanic/ENSO activity), Wallace 2018 also provides a long-term forecast that UAH TLT (i.e., lower tropospheric) temperatures are very likely to exhibit a declining trend over the period through 2026 at the least.

Furthermore, Wallace 2018 also points out that, even if UAH temperature data had happened to have had a statistically significant downward sloping linear trend, it would not have guaranteed that CO₂ had not had a statistically significant positive impact on temperature. It simply would have required the use of the proper mathematical tools to have obtained the statistical results to have proved it. This is why all of the focus on the magnitude of the slope of linear temperature trends by most climate scientists makes no sense to analysts experienced in the use of the mathematically proper econometrics-based structural analysis tools.

¹¹ See:

[http://www.doiserbia.nb.rs/\(X\(1\)A\(O911W9Dm0gEkAAAANjcxNWQ2NGEtM2ExNy00MTkwLWI3YTgtYTQ1N2QzMzI1NzgxA77CGrxyf6_S075rvy0gkboWe-c1\)\)/img/doi/0354-9836/2015/0354-98361500018A.pdf](http://www.doiserbia.nb.rs/(X(1)A(O911W9Dm0gEkAAAANjcxNWQ2NGEtM2ExNy00MTkwLWI3YTgtYTQ1N2QzMzI1NzgxA77CGrxyf6_S075rvy0gkboWe-c1))/img/doi/0354-9836/2015/0354-98361500018A.pdf), page S282

Finally, making another key technical point, Wallace 2018 argues against the use of *reanalysis data*¹² in structural analysis since its use makes mathematically rigorous hypothesis testing virtually impossible.

The enormous advantages of the econometrics-based structural analysis methodology used in Wallace 2018 and its predecessors over the methodology used in developing the Climate Models relied upon in EPA's CO₂ Endangerment Finding become more obvious every day, the explanation for which has been further discussed in highly relevant Congressional Testimony quoted at length in this Comment.¹³

4. ELEVEN FREQUENT CLIMATE ALARMISTS' CLAIMS HAVE EACH BEEN REBUTTED BY TRUE EXPERTS IN EACH FIELD BY SIMPLY CITING THE MOST RELEVANT AND CREDIBLE EMPIRICAL DATA.

On February 9, 2018, CHECC submitted a fifth Supplement to their Petition to provide additional new relevant and credible information relating to "Other State Variables" of the Earth's Climate System, that is, variables other than temperature. (*See*: EF CPP Fifth Supplement to Petition for Recon [FINAL020918](#)).

This Fifth Supplement to the CHECC Petition provided new highly relevant information that invalidates oft-repeated alarmist claims that human emissions of Greenhouse Gases ("GHGs") will cause calamitous changes in other state variables of the climate system such as sea level, ocean acidification, and extreme events.

As demonstrated in CHECC's original Petition and its first, second and sixth supplements, each of the three lines of evidence upon which EPA relies to attribute global warming to human GHG emissions has been invalidated. As a result, EPA has no proof whatsoever, and no scientist has devised an empirically validated theory, that CO₂ has had a statistically significant impact on global temperatures.

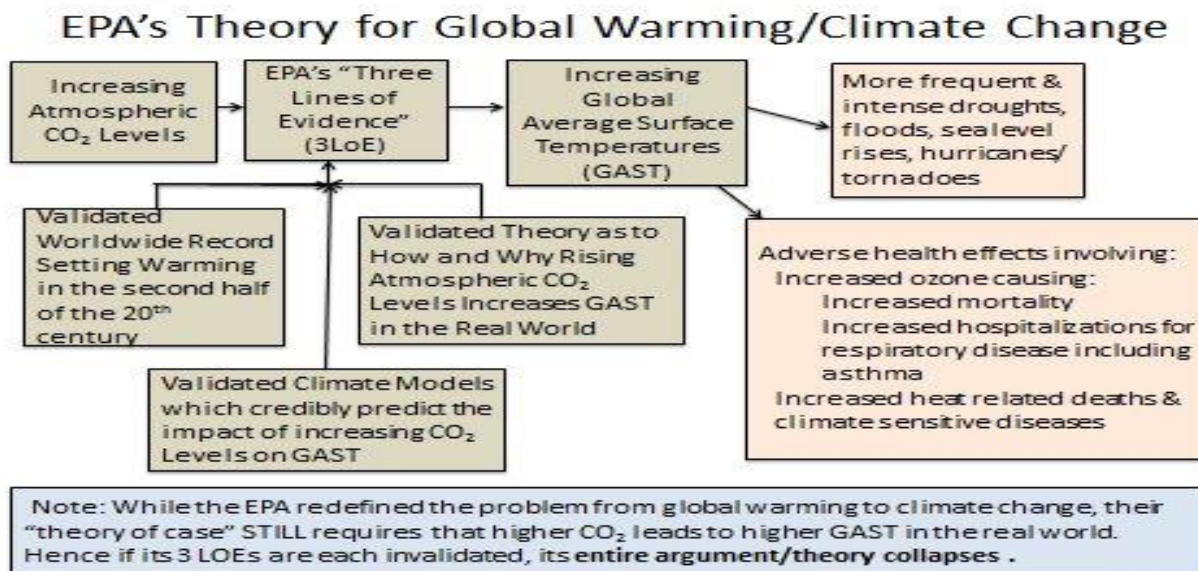
If the causal link between higher atmospheric CO₂ concentrations and higher global average surface temperature ("GAST") is broken by invalidating each of EPA's three lines of evidence, then EPA's assertions in the 2009 EF that higher CO₂

¹² Reanalysis data can be thought of as raw data adjusted by climate modelers to be more consistent with a particular theory or theories.

¹³ See: U.S. House Committee on Science, Space & Technology March 29, 2017, Testimony of Dr. John R. Christy, pages 10-11 Professor of Atmospheric Science, University of Alabama in Huntsville Alabama State Climatologist

concentrations also cause loss of Arctic ice¹⁴, sea-level increases¹⁵ and more frequent severe temperatures,¹⁶ storms,¹⁷ floods,¹⁸ and droughts¹⁹ are also necessarily disproved. EPA's faulty chain of reasoning is depicted in Figure 1:

Figure 1



Such causality assertions require a validated theory that higher atmospheric CO₂ concentrations cause increases in GAST and in turn cause these other phenomena.

¹⁴ Technical Support Document for Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act ("TSD"), pp. ES-4 ("Sea ice extent is projected to shrink in the Arctic under all IPCC emissions scenarios") See also *id.* at pp. 52; 73

¹⁵ *Id.* at p. ES-4 ("By the end of the century, global average sea level is projected by IPCC to rise between 7.1 and 23 inches."); See also *id.* at 52,73.

¹⁶ *Id.* at pp. ES-4 ("It is very likely that heat waves will become more intense, more frequent, and longer lasting in a future warm climate, whereas cold episodes are projected to decrease significantly."); See also *id.* at pp. 44-45; 73-74.

¹⁷ *Id.* at ES-4 ("It is likely that hurricanes will become more intense").

¹⁸ *Id.* at ES-4 ("Intensity of precipitation events is projected to increase in the United States and other regions of the world. More intense precipitation is expected to increase the risk of flooding.")

¹⁹ *Id.* at p. ES-6 (Reduced snowpack, earlier spring snowmelt, and increased likelihood of seasonal summer droughts are projected in the Northeast, Northwest, and Alaska. More severe, sustained droughts and water scarcity are projected in the Southeast, Great Plains, and Southwest."); 45-46; 73-74.

Lacking such a validated theory, EPA's conclusions cannot stand. In science, credible empirical data always trump proposed theories, even if those theories are claimed to (or actually do) represent the current consensus.

The Fifth Supplement presented a series of rebuttals of typical climate alarmists' claims regarding other state variables of the climate system, such as those mentioned above and those made in the recently released Fourth National Climate Assessment Report.²⁰ The authors of these rebuttals are all recognized experts in the relevant scientific fields. The rebuttals demonstrate the falsity of EPA's claims merely by citing the most credible empirical data on the topic.

Those alarmist claim rebuttals were recently updated. An overview of the rebuttals is available at [AC Rebuttal Overview 020619](#). Like the original overview, for each alarmist claim, the updated overview includes a Summary of Rebuttal along with a link to the full text of the rebuttal and a list of the Rebuttal's authors, including their credentials.

The eleven alarmist claims and links to this information are as follows:

1. **Claim: Heat Waves are increasing at an alarming rate and heat kills.**

Detailed Rebuttal and Authors: [AC Rebuttal Heat Waves](#)

2. **Claim: Global warming is causing more hurricanes and stronger hurricanes.**

Detailed Rebuttal and Authors: [AC Rebuttal Hurricanes](#)

3. **Claim: Global warming is causing more and stronger tornadoes.**

Detailed Rebuttal and Authors: [AC Rebuttal Tornadoes](#)

4. **Claim: Global warming is increasing the magnitude and frequency of droughts and floods.**

Detailed Rebuttal and Authors: [AC Rebuttal Droughts and Floods](#)

5. **Claim: Global Warming has increased U.S. Wildfires.**

Detailed Rebuttal and Authors: [AC Rebuttal Wildfires](#)

²⁰ <https://science2017.globalchange.gov>

6. **Claim: Global warming is causing snow to disappear.**

Detailed Rebuttal and Authors: [AC Rebuttal Snow](#)

7. **Claim: Global warming is resulting in rising sea levels as seen in both tide gauge and satellite technology.**

Detailed Rebuttal and Authors: [AC Rebuttal – Sea Level](#)

8. **Claim: Arctic, Antarctic and Greenland ice loss is accelerating due to global warming.**

Detailed Rebuttal and Authors: [AC Rebuttal Arctic, Antarctic and Greenland](#)

9. **Claim: Rising atmospheric CO₂ concentrations are causing ocean acidification, which is catastrophically harming marine life.**

Detailed Rebuttal and Author: [AC Rebuttal - Ocean Acidification 020519.](#)

10. **Claim: Carbon pollution is a health hazard.**

Detailed Rebuttal and Authors: [AC Rebuttal Health Impacts](#)

11. **Claim: Global Warming resulting from rising CO₂ emissions threatens agriculture and food security.**

Detailed Rebuttal and Authors: [AC Rebuttal Agriculture and Food](#)

The bottom line here is that readily available empirical data presented in each of the updated Rebuttals above show that not even one of these frequently-repeated alarmist claims is true. This result should not be surprising. Since nothing unusual is going on with respect to temperature patterns, why would any of the other state variables of the climate system be expected to be behaving in an unusual fashion? They are not.

However, the alleged knock-on effects of global warming, such as claimed unusual loss of Arctic ice, increased sea level, and increased heat waves, floods, droughts, hurricanes, tornadoes, etc. are constantly cited in a massive “big lie” propaganda campaign to whip up alarm and create demands for ever tighter regulation of GHG/CO₂ emissions. Moreover, it is critically important to note that EPA relied on

such bogus claims to justify its stationary power 2015 EF²¹. But there is no evidence to support such claims, and copious empirical evidence that refutes them.

Going forward, the enormous cost and essentially limitless scope of 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.

The past parade of horrible calamities that the now discredited Climate Models have attributed to CO₂ emissions and associated Global Warming (and that a vast program of regulation, predicated on the Endangerment Findings, seeks to prevent going forward) has been comprehensively and conclusively refuted by the relevant empirical data. Therefore, the 2015 and 2018 NSPS Rules should be withdrawn. Moreover, vehicle MPG standards should not be impacted in any way whatsoever by the U.S. or worldwide GHG emissions outlook.

5. 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

²¹ See 2015 NSPS Rule, 80 FR at 64517:2 and notes 15-19 above.

Finding is fundamentally flawed and that an honest, unbiased reconsideration is in order.

The letter states further that:

If such a reconsideration is granted, each of us will assist in a new Endangerment Finding assessment that is carried out in a fashion that is legally consistent with the relevant statute and case law. We see this as a very urgent matter ...

EPA should heed their advice.

C. RECOMMENDATIONS BASED ON SCIENCE ARGUMENTS.

CHECC fully endorses the recommendations of these scientists because recent research has definitively validated that: once certain natural factor (i.e., solar, volcanic and oceanic/ENSO activity) 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 key cyclical patterns and linear trends in all relevant temperature data sets over the last 50 or more years. 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, Global Average Surface Temperatures (GAST.)

Moreover, additional new research findings demonstrate that data manipulation/adjustments by government agencies to the previously reported GAST data have rendered the entire data record now totally inconsistent with published credible temperature data sets and useless for any policy analysis purpose. These new results, that demonstrate that GAST data are invalid and useless, conclusively invalidate the claims based on GAST data of “record warming” in recent years and also invalidate the two other “lines of evidence” on which EPA claimed to base its 2009 CO₂ Endangerment Finding.

In addition, 11 typical climate alarmist claims have each been invalidated by specialists in each of the areas simply relying on the most credible, relevant empirical data.

The two invalidated CO₂ Endangerment Findings, combined with NEPA and other regulations, are now driving numerous crippling state and federal CO₂-related decisions. For example, decisions involving pipeline construction, mineral leasing on federal land and the mandated use of wind and solar for electric power generation are

already having numerous very serious negative impacts on the Nation's Energy, Economic and National Security. If this continues, achieving and maintaining U.S. Energy Dominance is gravely threatened if not out of the question. How could it be otherwise with many state regulators and politicians in the federal government even now calling for eliminating all use of America's enormous fossil fuel reserves? Continuing down this path will without any doubt cause U.S. energy prices to skyrocket to the enormous detriment of human health and welfare. It would be a tragic error if policies intended to protect human health and welfare actually substantially degraded them.

Clearly, to stop this fundamentally misguided regulatory process, based on the science-based evidence alone, the 2009 and 2015 GHG Endangerment Findings must be put through a rigorous reconsideration process. In addition, by necessary implication, EPA should not issue any replacement for the CPP, or move forward with the ACE Rule or 2015 or 2018 NSPS Rules. In addition, EPA should not allow future CO₂ emissions to impact its view as to the proper vehicle MPG standards. CO₂ is a beneficial gas.

IV. THE 2015 AND THE 2018 NSPS RULES SHOULD BE WITHDRAWN BECAUSE INCREASING THE FRACTION OF ELECTRICITY GENERATION FROM INTERMITTENT RENEWABLES CAUSES ENORMOUS CONSUMER ELECTRICITY PRICE INCREASES AND SERIOUS NEGATIVE MACROECONOMIC IMPACTS.

The effort to increase the percentage of electricity generated by intermittent renewable sources like wind and solar inevitably brings about large increases in the actual price of electricity that must be paid by consumers. The price increases grow and accelerate as the percentage of electricity generated from the intermittent renewables increases toward 100 percent. These statements may seem counterintuitive, given that the cost of fuel for wind and solar generation is zero. However, simple modeling shows the reason for the seemingly counterintuitive outcome: the need for large and increasing amounts of costly backup and storage – things that are not needed at all in conventional fossil-fuel-based systems. And it is not only from modeling that we know that such cost increases would be inevitable. We also have actual and growing experience from those few jurisdictions that have attempted to generate more and more of their electricity from these renewables. This empirical experience proves the truth of the rising consumer price proposition.

In those jurisdictions that have succeeded in getting generation from renewables up to as high as about 30% of their total electricity supply, the result has been an approximate tripling in the price of electricity for their consumers. The few (basically

experimental) jurisdictions that have gotten generation from renewables even higher than that have had even greater cost increases, for relatively minor increases in generation from renewables. As the percentage of electricity coming from renewables increases, the consumer price increases accelerate.

No jurisdiction – even an experimental one – has yet succeeded in getting the percentage of its electricity generated from the intermittent renewables much past 50% on an annualized basis. To accomplish the feat of getting beyond 50% and closer to 100%, the grid operator must cease relying on fossil fuel backup power for times of dark and calm, and move instead to some form of storage, most likely very large batteries. The cost of such batteries sufficient to power a jurisdiction of millions of people is enormous, and quickly comes to be the dominant cost of the system. Relatively simple calculations of the cost of batteries sufficient to get through a year for a modern industrialized area show that this cost would imply an increase in the price of electricity by a factor of some 15 or 20, and perhaps even more.

The burden of such increasing prices for electricity would fall most heavily on poor and low-income people.

The reason that increasing renewable generation leads to accelerating consumer prices is that an electrical grid must operate with one hundred percent reliability on a 24/7/365 basis. A reliable grid requires a very close match between power supplied and power demanded on a minute-by-minute, and even a fraction of second, basis. But wind and solar sources experience large, unpredictable, and often sudden swings in the power that they supply. Therefore, in a grid using large amounts of power from wind and solar sources, additional costly elements must be added to the system to even out the supply and always match it to the demand. These additional elements are what bring about the increased costs and thus increased consumer prices:

- In the early stages of moving toward increasing generation from intermittent renewables – say, to get 10% of the generation from the renewables -- a grid operator can simply add some new wind turbines or solar panels to the system, and then accept that power onto the grid when it is available. However, there will be substantial times when no such power is available (e.g., calm nights). Therefore, all or nearly all pre-existing fossil fuel capacity must be maintained, even though some of it may be idle much of the time. Although the fuel cost of the renewables is zero, the operator must pay the capital cost of two overlapping and duplicative systems to the extent of the renewable capacity.

- To get the percentage of generation from renewables beyond about 10% and into the range of 20-30%, the operator can massively expand renewable sources, such that the renewable capacity becomes equal to, or even a multiple of peak usage. (Jurisdictions including Germany and Denmark have followed this strategy.) With such massive renewable capacity, the system may even work without backup at some times of relatively low wind or thick clouds. However, no amount of excess capacity can make a wind/solar-only system generate any electricity on a completely calm night, nor any meaningful amount on a heavily overcast and calm winter day. If the backup comes from fossil fuel facilities, very nearly the full fleet must still be maintained. As wind/solar capacity goes to 100% and even 200% of peak usage, the capital costs are double or even triple those of a fossil-fuel-only system. But, since much of the time will be dark and/or calm, the percentage of electricity coming from the renewables will still only be around 30%, and the decrease in carbon emissions from the backup fossil fuel plants will be even less, since they must often be kept on “spinning reserve” to be ready to step in when the wind and sun die down.
- To get the percentage of generation from wind and solar up above 30% and then to 50% and beyond, the fossil fuel backup must be gradually phased out, and replaced incrementally with some sort of storage. Batteries are the only feasible storage option in most locations. The amount of battery capacity needed increases dramatically as the percentage of generation from renewables approaches 100%. Due to seasonality of the availability of the wind and sun, most locations require *a month or more of battery capacity* to carry a fully-wind/solar system through a year. The cost of the batteries is enormous, and quickly comes to dominate the cost of the system. In jurisdictions where a calculation has been made, the cost of the batteries exceeds the full annual GDP of the jurisdiction, and implies an increase in the price of electricity by a factor of 15, 20 or more.

In a post at the website Energy Matters on November 22, 2018, Roger Andrews set forth a detailed analysis of what it would take to get to an electricity grid powered 100% by wind and solar sources, backed up by batteries. Mr. Andrews’s post is available at this link: <http://euanmearns.com/the-cost-of-wind-solar-power-batteries-included/> Andrews’s study covers two cases, Germany and California. His analysis is detailed, but not complicated, and can be replicated or challenged by anyone competent at basic arithmetic.

Andrews collects data for day-by-day power generation for a full year from existing wind and solar sources for both Germany and California. That data immediately reveals a fundamental issue, which is that the wind and sun are not only intermittent within a given day or week, but they also vary greatly from season to season. Thus, for example, in California, both the wind and the sun produce substantially more power in the summer and fall than in the winter and spring. That means that to have a fully-wind/solar system in California backed up with batteries, you need the batteries to store power from April to October, to be discharged from November to March. The total amount of storage needed comes to some 25,000 GWh for a year, equal to more than a full month's current rate of usage. The batteries for such an effort – even assuming substantial declines from current prices – will cost approximately \$5 trillion, which is more than the full annual GDP of California. And these batteries will need to be replaced regularly.

Andrews concludes:

The combined wind + solar LCOE [Levelized Cost of Energy] without storage was **\$50/MWh . . .**

I then estimated wind + solar LCOEs with battery storage capital costs included. This was a straightforward exercise because reducing baseload + load-following generation in direct proportion to the increase in wind + solar generation results in LCOEs that are the same regardless of the percentage of wind + solar in the generation mix. The NREL calculator showed:

LCOE Case A [Germany]: **\$699/MWh**

LCOE Case B [California]: **\$1,096/MWh**

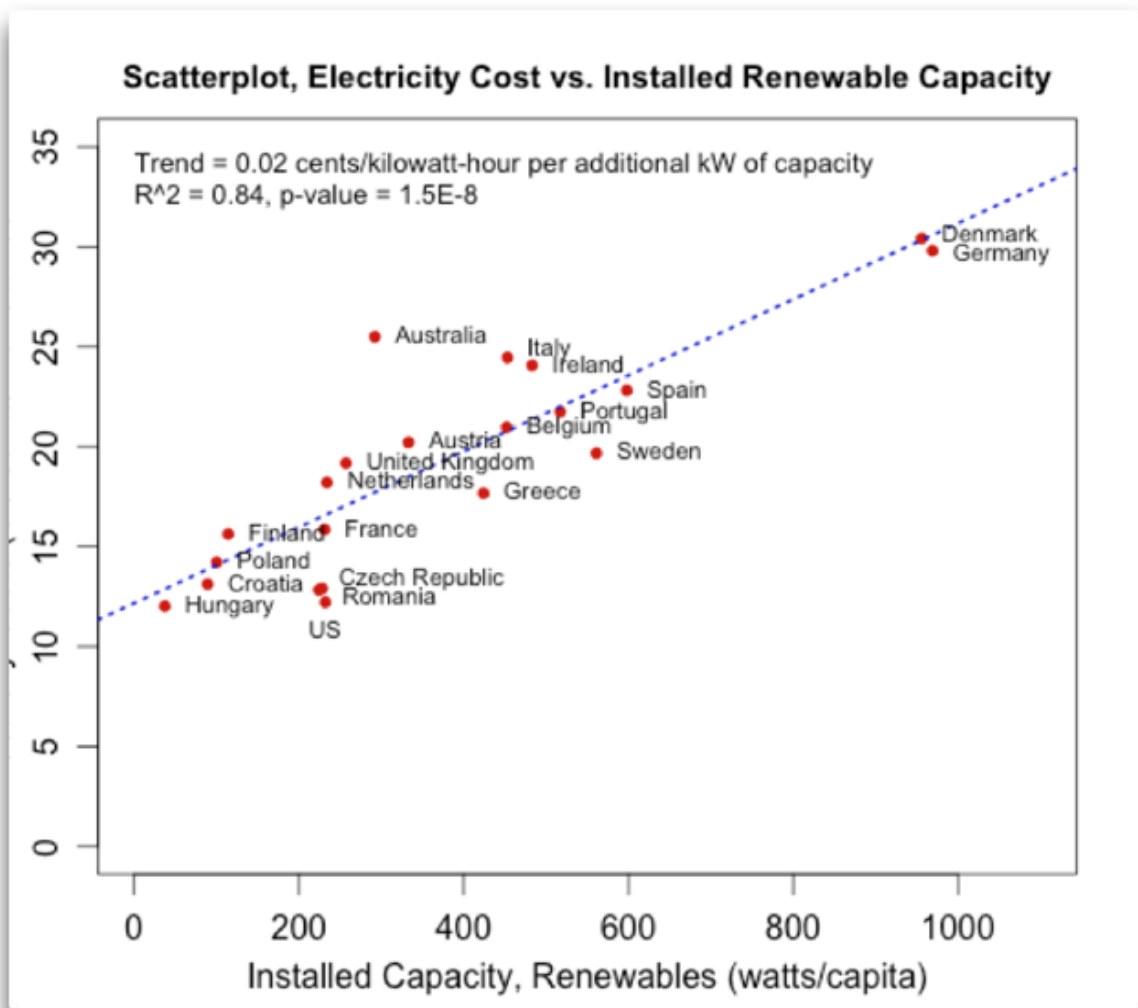
These ruinously expensive LCOEs are entirely a result of the added costs of storage batteries, which in the 100% wind + solar scenarios approach \$5 trillion in both Case A [Germany] and Case B [California], compared to wind + solar capital costs of ~\$300 billion in Case A and ~\$160 billion in Case B.

Moving to 100% renewables would increase the capital costs by a factor of about 14 for Germany and 22 for California. (The difference derives from lesser seasonality in Germany than California.)

Although no jurisdiction has yet tried to test Andrews's calculations by pushing generation from renewables toward 100%, many have gone down the road

of pushing generation from renewables to the range of 30%, and some experimental jurisdictions have gotten slightly past 50%. Substantial data show the effect on the cost of the resulting electrical system, and on consumer prices if they bore the full cost. The experimental jurisdictions have not imposed the bulk of the costs on the consumer.

The following chart, initially prepared by Willis Eschenbach of the website WattsUpWithThat, shows the near linear relationship between installed renewables capacity per capita (in watts/capita) on the x-axis and cost of electricity to the consumer (in cents per kilowatt hour) on the y-axis, where each point is a country. The chart is available at the following link:



<https://wattsupwiththat.com/2015/08/03/obama-may-finally-succeed/>

Germany is the leader in Europe in its power generation per capita from renewables, through its so-called *Energiewende*, having gotten the percentage of its electricity from wind and solar up to about 30% or more. However, the cost of electricity to consumers has approximately tripled, to about 30 cents per kWh, compared to an average price to the consumer in the U.S. of approximately 13 cents per kWh. Analyses of the soaring price of electricity in Germany place the blame squarely on excess costs that have been necessarily incurred to try to get to a stable, functioning, 24/7 system with so much input from intermittent renewables.

First, massive “excess” wind and solar capacity has been installed to compensate for periods of light wind and heavy clouds. And for the completely calm nights and overcast winter days, nearly the entire fleet of fossil fuel plants has been maintained and ready to go, even though those sources end up being idle much of the time. Germany has also struggled with the surges of available electricity when the wind and sun suddenly blow and shine together at full strength at the same time.

As noted by Benny Peiser at the Global Warming Policy Foundation on April 4, 2015 (<http://www.thegwpcf.com/benny-peiser-eus-green-energy-debacle-shows-the-futility-of-unilateral-climate-policies/>):

Every 10 new units worth of wind power installation has to be backed up with some eight units worth of fossil fuel generation. This is because fossil fuel plants have to power up suddenly to meet the deficiencies of intermittent renewables. In short, renewables do not provide an escape route from fossil fuel use without which they are unsustainable. . . . To avoid blackouts, the government has to subsidize uneconomic gas and coal power plants. . . . Germany’s renewable energy levy, which subsidizes green energy production, rose from 14 billion euros to 20 billion euros in just one year as a result of the fierce expansion of wind and solar power projects. Since the introduction of the levy in 2000, the electricity bill of the typical German consumer has doubled.

To further illustrate the relationship between the percentage of electricity from renewables and cost of electricity to the consumer, consider the case of California. According to the California Energy Commission, in 2016 California got 8.11% of its electricity supply from solar and 9.06% from wind, for a total of 17.17% from those two intermittent sources. *See* http://www.energy.ca.gov/almanac/electricity_data/total_system_power.html. For the U.S. as a whole the percentage of generation from wind and solar was 6.5%. *See* <https://www.eia.gov/tools/faqs/faq.php?id=427&t=3>.

According to the U.S. Energy Information Agency, California's average electricity price that year was 14.91 cents per kWh, versus a U.S. average of 10.10 cents per kWh; that is, almost 50% higher. *See*

https://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a.

There are only a handful of small jurisdictions that have tried to get the percentage of their electricity generation from renewables beyond the 30% achieved by Germany. However, going beyond the 30% level has been achieved only at high and accelerating costs. One such jurisdiction is Gapa Island, a small island of only 178 people (97 households) in South Korea. A report on the Gapa Island Project appeared on the Hankyoreh news site in July 2016

(http://english.hani.co.kr/arti/english_edition/e_national/752623.html).

With average electricity usage of 142 kw, and maximum usage of 230 kw, the islanders installed wind and solar capacity of 674 kw – about *three times* maximum usage, to deal with light wind and low sun. They also bought battery capacity for about eight hours of average usage. The cost of the wind and solar capacity plus batteries was approximately \$12.5 million, or about \$125,000 per household. And despite all that investment, the islanders were still only able to get about 42% of their electricity from the sun and wind when averaged over a full month. Even with the storage, they still needed the full fossil fuel backup capacity.

Applying a reasonable cost of capital to a system like that of Gapa Island, and considering additional elements of a system, like additional storage, that would be necessary to push the percent of total generation from renewables to higher levels, one can calculate that a system like the Gapa demonstration project for the full United States would lead to electricity prices of *at least five times* their current level, and more likely, far higher. And even then, the U.S. would be hard-pressed to achieve 50% of electricity from the intermittent renewables.

A somewhat larger demonstration project on the Spanish island of El Hierro (population about 10,000) has had similar results. The idea on El Hierro was to combine a massive wind farm with a large elevated reservoir to store water, which would then be released at times of low wind to balance the grid. El Hierro has the good fortune of a mountainous geography, so that a large reservoir could be placed at a relatively high elevation, in close proximity to the consumers of the electricity. The investment in the wind/water system was approximately 64.7 million euros, or about \$80 million – which was on top of what was already a fully-functioning fossil fuel-based system, all of which still needed to be kept. Operations of the El Hierro project began in 2015 with high expectations for 100% renewable generation, but it has not come close.

An operations review of the El Hierro system from inception through 2017 by Roger Andrews can be found at <http://euanmearns.com/el-hierro-end-2017-performance-update/>. During 2017 the percent of generated electricity that came from renewables ranged from 62.4% in September to only 24.7% in November, with the overall average for the year at about 40%. Based on the data from actual operations, Mr. Andrews calculates that to achieve the goal of 100% generation from the wind/water project, El Hierro would need to increase its wind turbine capacity by some 50%, and the capacity of its reservoir *by a factor of 40*. Clearly, there is no place on the island to put such a massive reservoir; and if there were, the cost would be not in the millions, but in the billions. And that would be for a mere 10,000 people.

A further update of performance of the El Hierro system by Mr. Andrews covering the 2018 year appeared at the Energy Matters site on January 6, 2019, and can be found at <http://euanmearns.com/el-hierro-fourth-quarter-2018-performance-update/>. During 2018, the El Hierro system supplied 56.6% of the island's electricity (which represented only 13.0% of its total energy usage). However, the production from the system varied widely over the course of the year, producing as much as 74.2% of the island's electricity in 3Q 2018, but only 27.7% in 4Q. The 27.7% electricity generation in 4Q represented only 6.4% of the island's total energy usage.

The geography of the United States does not permit a water storage system like that of El Hierro for most parts of the country. The alternative of storage by large batteries carries truly astounding costs, potentially multiplying the cost of electricity by a factor of 20 or more. Today, the estimated lifespan of these large battery storage systems is only guesswork.

Such an economic jolt would hit everyone in the country hard, with the possible exception of some of the very wealthiest people. Even middle and upper middle-income people would be forced to make major reductions in their energy consumption. But poor and low-income people would be hit by far the hardest. If electricity prices went to ten or twenty times current levels, most low-income people would be almost completely priced out of things they now take for granted, like light, refrigeration and computers. They would be forced into energy poverty. This is the route down which the Clean Power Plan, but for the Supreme Court's stay, would surely have taken us – on the now thoroughly discredited assumption that CO₂ is a pollutant (*See* Section III above).

A study last year by IHS Markit, titled [*Ensuring Resilient and Efficient Electricity Generation: The Value of the Current Diverse U.S. Power Supply Portfolio*](#) considered 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 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 above 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 current state and federal [policy-driven market distortion will imply:](#)

Increased variability of monthly consumer electricity bills by around 22 percent; and an additional \$75 billion per hour cost associated with more frequent power supply outages.

Id. (Emphasis added).

The study's lead author commented that "[d]iversity of supply is an essential bedrock for security and reliability for an electric power system that is as big and diverse—and as crucially important—as that of the United States." See <http://news.ihsmarkit.com/print/node/23497>

In a final irony, 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:

Ironically, addressing climate change concerns with federal and state policies to subsidize and mandate wind and solar electric generation produced the unintended consequence of distorting wholesale electricity market clearing prices and driving the uneconomic closure of nuclear power plants—a zero-emitting source. The result has been some power system CO₂ emissions remaining constant or increasing, ...

Id.

V. THE 2009 ENDANGERMENT FINDING GRAVELY JEOPARDIZES ACHIEVING U.S. ENERGY DOMINANCE.

It is no exaggeration to say that for some time now environmental groups have been waging an all-out war to apply ever tighter GHG regulation to force the eventual total elimination of fossil fuels in the American economy. For example, the Sierra Club has launched a "Beyond Fossil Fuels" campaign to push the Country to 100% "clean and renewable" energy.²² The war is being waged at every point of regulatory contact with fossil fuels, from exploration, extraction, transportation, processing, to consumption and disposal. The war is waged at all levels and branches of local, state, national and international governments. The war against fossil fuels is now also being waged by most electric utilities, many players in the transportation sector, and indirectly against funding of fossil fuel companies and projects by many key players in the financial sector.

In addition to direct claims based on nuisance and public trust legal theories, a large number of administrative petitions and lawsuits have been filed against the U.S. government to force tighter GHG regulation under a plethora of environmental statutes, such as the Clean Air Act, the Clean Water Act, the Endangered Species Act and the National Environmental Policy Act. Many, if not all, proposed oil or gas terminal, refinery and pipeline projects in the United States are being challenged. Even projects that are ultimately approved experience substantial delays and increased costs.

²² <https://content.sierraclub.org/ourwildamerica/beyond-dirty-fuels-initiative>

The same is true of federal government mineral leasing efforts. While the full catalog of such litigation is beyond the scope of this Comment, representative examples include the following:

Case	Claim	Case No.	Status	Statute
Sierra Club v. FERC	Challenge to Sabal Trail Pipeline for failure to consider downstream GHG impacts	867 F.3d 1357 (DC Cir. 2017)	Remanded for FERC to consider GHG impacts	NEPA
Allegheny Defense Project v. FERC	Challenge to Atlantic Sunrise Pipeline for natural gas for failure to consider downstream impacts on climate change impacts	DC Cir. 17-1098	Pending	NEPA
Atchafalaya Basinkeeper v. USACE	Challenge to Bayou Bridge Pipeline project for failure to consider GHG and climate Impacts - Injunction Granted, stayed on appeal	5th Cir. 18-30257	Preliminary injunction vacated by 5th Cir.	NEPA
In re: PennEast Pipeline Co.	Request for FERC to reconsider authorization of PennEast Pipeline project	FERC CP15-558-000,	Denied	CWA, NEPA
Sierra Club, et. al. v. USACE	Challenge to stream crossing permits for Mountain Valley Pipeline	5th Cir. 18-1173	Permits stayed pending appeal	CWA
California v. BLM Sierra Club v. Zinke	Challenge to repeal of fracking regulations for failure to consider climate change impacts	N.D. CA 4:18-cv-00521 3:18-cv-00524	Pending	NEPA
High Country Conservation Advocates v. US Forest Service	Mine expansion permit delayed 4 years for failure to adequately consider GHGs	D CO 1:17-cv-03025	Concluded	NEPA

Millennium Bulk Terminals Longview LLC v. Washington State Dept. of Ecology	Challenge to denial of water quality certificate for coal terminal	Washington Superior Court	Pending	CWA
Conservation Law Foundation v. Shell Oil Products, Inc.	Challenge to bulk fuel storage terminal for failure to prepare for climate change	D RI 1:17-cv-00396	Pending	CWA
Center for Biological Diversity v. US Forest Service	Challenge to oil and gas leasing in Wayne National Forest for failure to consider climate change	SD OH 2:17-cv-0372,	Pending	NEPA
Center for Biological Diversity v. US Bureau of Land Management	Challenge to oil and gas lease sale in Nevada for failure to consider GHG emissions and climate change impacts	D NV 3:17-cv-00553	Pending	NEPA
Wilderness Workshop v. US BLM	Challenge to 53 oil and gas lease parcels for failure to consider GHGs and climate change impacts	D CO 1:18-cv-00987	Pending	NEPA
Save the Colorado v. US Bureau of Reclamation	Challenge to diversion of river water for reservoir for failure to consider climate change impacts	D CO 1:17-cv-02563	Pending	NEPA
Center for Biological Diversity, et. al v. Ross	Failure to consider climate change in management of lobster fishery in relation to right whales	DDC 1:18-cv-00283	Pending	ESA
Center for Biological Diversity v. Zinke	Challenge to failure to list Pacific Walrus as endangered species due to climate change	D AK 3:1-cv-00064	Pending	ESA
Center for Biological Diversity v. Zinke	Challenge to failure to make finding on whether Tinian monarch endangered by, inter alia, climate change	D DC 1:18-cv-00862	Pending	ESA

For further information on climate-based litigation in the U.S., see <http://columbiaclimatelaw.com/resources/u-s-litigation-database/>

In litigation seeking to block or delay important fossil fuel energy development projects, or to force tighter regulation of GHG emissions, the mere existence of the 2009 EF makes it awkward at best, if not impossible in practice, for the U.S. Government to dispute the alleged adverse effects of GHG emissions, were it ever inclined to do so. As a result, the issue in such litigation is never whether to regulate, but only how much to regulate GHG emissions. Over time, the continued existence of the 2009 EF makes a ratcheting effect of such litigation towards ever more stringent GHG regulation all but inevitable.

The ongoing all-out war on fossil fuels, enabled and sustained by the U.S. Government's current official position in the 2009 EF that GHG emissions endanger human health and welfare, poses a direct threat to America's strategic, diplomatic, economic and national security interests. Indeed, there are suggestions, as yet unproven in the public square, that the campaign against fossil fuels is covertly funded, at least in part, by our international adversaries, an international version of the classic alliance between Baptists and bootleggers. This GHG-based war on fossil fuels has put President Trump's declared Energy Dominance Strategy in very serious jeopardy, and thus also America's current economic and national security outlook.

The 2009 EF should be reconsidered, and regulations that arise from it, like the 2015 and 2018 NSPS Rules, the CPP and the ACE Rule, should be withdrawn.

VI. CONCLUSION

If the 2009 Endangerment Finding is not ultimately vacated, it is certain that electric utility, oil & gas, automotive and many other industries will face ongoing EPA CO₂ regulation, whether the current administration likes it or not. The scientifically unjustifiable Endangerment Finding and the ensuing regulatory push to renewable energy will cause U.S. energy prices to skyrocket, thereby dramatically reducing energy security, economic growth, and jobs, as clearly demonstrated by the experience of U.S. States, Germany and all other countries that are now strictly enforcing such GHG regulations.

The scientific invalidity of the Endangerment Finding has become more blindingly obvious and undeniable with each day's accumulation of credible empirical data. It is time for an honest and rigorous scientific re-evaluation of this Obama-era political document – which is what the 2009 Endangerment Finding really is. The nation

has been taken down a tragically foolish path of pointless regulations and wasteful mal-investments to “solve” a problem which does not actually exist. Our political leaders and courts must summon the courage to acknowledge the truth and act accordingly. All Americans will benefit from a new era where the cheapest sources of energy can also compete and prevail in the marketplace. The fossil fuel resources of the U.S. are enormous and – by virtue of advancing extraction technology – increasing, yet climate alarmists want them left untouched.

Failure to reconsider the Endangerment Finding may well lead to regulation by litigation – in which a handful of judges in one part of the country impose upon the entire country a regulatory regime that the vast majority of Americans oppose but can do nothing about. Without undertaking an unbiased, rigorous and lawful process that firmly resolves the underlying concerns over the validity of the Endangerment Finding, regulation by litigation will lead to many extremely poor decisions, and enormous and unnecessary political, economic and social costs.

Therefore, CHECC, based on all of this new evidence, implores EPA to grant the “very urgent” scientists’ request for an honest, unbiased reconsideration of the 2009 GHG Endangerment Finding based on the scientific method.

Finally, CHECC urges EPA to simply withdraw the 2015 NSPS Rules and the CPP, not replace them with the 2018 NSPS Rule or the ACE Rule, or anything else until a lawful and scientifically rigorous and valid finding of endangerment under Section 111(b)(1)(A) has been made.

Respectfully submitted, this 15th day of March, 2019.

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