Submitted Testimony of David Porter
Chairman, Railroad Commission of Texas
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Subcommittee on Energy and Power
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Chairman Whitfield, Ranking Member Rush and members of the Committee:

For the record, I am David Porter, Chairman of the Railroad Commission of Texas.

For those of you who are not familiar with the Railroad Commission of Texas, we are the State's chief energy regulator. I am one of three statewide elected Commissioners, and we oversee everything from oil and gas to pipelines, uranium exploration, surface coal mining, natural gas local distribution companies and alternative natural gas fuels.

The Railroad Commission of Texas has effectively regulated the oil and natural gas industry in the State of Texas since 1919. It is one of the oldest state agencies in the nation and the most mature energy regulatory body in the world. The Commission's primary statutory responsibilities in the regulation of oil and gas are to: conserve the State's natural resources; prevent the waste of natural resources; protect the correlative rights of mineral interest owners; protect the environment from pollution associated with oil and gas development activity; and promote safety for personnel and communities involved in or affected by oil and gas development. The Railroad Commission works closely with the Texas Commission on Environmental Quality, which has primary jurisdiction over air emissions for the purposes of safeguarding the State's air resources.

Texas is the nation's largest producer of oil and natural gas and the Commission monitors approximately 433,000 oil and natural gas wells, more than 335,000 of which are actively

producing. This energy production supports two million jobs in Texas and about a quarter of the State's economy. The industry benefits Texas and the entire United States.

The recent surge in oil and gas drilling has considerably bolstered the national economy, attracting hundreds of billions dollars in U.S.-based investments and contributing hundreds of billions dollars annually to the national GDP. These historic production increases have also paved the way for extraordinary geopolitical advantages. In recent years, the United States has been able to surpass Saudi Arabia and Russia as the leading producer of oil and natural gas liquids in the world.

We have also seen a huge shift in the balance of trade because of the growing strength of our domestic energy industry. Domestic oil production has increased by 4.34 million barrels per day since 2006, and correspondingly, the trade deficit has decreased $230 billion dollars in 10 years, from $-762.72 billion to $-531.50 billion – about 30 percent.

As Chairman of the Railroad Commission, it is my job to ensure fair and consistent energy regulation in Texas — so businesses can safely, efficiently and economically produce the energy that powers our state and national economies. I very much appreciate the opportunity to submit this testimony regarding recent rulemaking by the United States Environmental Protection Agency (EPA) under the Clean Air Act (CAA).

CAA rulemaking by EPA during the Obama administration has caused grave concern in Texas for numerous reasons. The rulemaking has been characterized by:

- minimal interaction and consultation with Texas and other State regulatory authorities;
- underestimated or ignored compliance costs;
- overestimated, unjustified and exaggerated regulatory and environmental benefits;
- increased regulatory and economic burden on operating companies, particularly the smaller operators who make up an overwhelming majority of the industry in Texas; and
- creation of "one-size-fits-all" regulations that ignore the significant differences in regional operating conditions and State regulatory systems.

The underlying themes in EPA rulemaking under the Obama Administration have been the consolidation of increased regulatory power in the Federal Government to the detriment of State authority, and the circumvention of the regulatory authority granted to EPA by Congress.

My testimony below will specifically address the recent EPA Methane rules, the Clean Power Plan and the Mercury and Air Toxics Standards.

EPA Methane Rules

EPA rules on methane emissions from the oil and gas sector are just another assault from this administration in the President's war against fossil fuels and a blatant attempt to forcibly take over the regulation of Texas' oil and gas industry, a job the Railroad Commission has excelled at for almost a century. These overbearing regulations accomplish nothing other than restricting

business growth and innovation, wounding our economy and killing the jobs Texans rely on to support their families.

The new EPA rules on methane emissions include New Source Performance Standards for New Modified and Reconstructed Sources and the Source Determination Rule.

Methane Emissions – New Source Performance Standards for New, Modified and Reconstructed Sources

The Commission is concerned that the oil and natural gas industry in Texas will be significantly impacted by the methane rules, which continue the uncontrolled expansion of EPA's authority to regulate and control oil and natural gas activities in Texas and other States.

EPA underestimated the number of sources that will be affected by the impacts of these burdensome regulations and the costs associated with the rule. In addition, EPA substantially overestimated the industry's ability to meet the compliance schedule because it failed to take into account the availability of the required control equipment.

The New Source Performance Standards cover all aspects of oil and gas production, processing, transmission and storage. These excessive rules greatly expand the regulatory requirements for reviews, inspections and compliance efforts, without the associated funding and without sufficiently demonstrating significant or even proportional gains in public health and environmental protection.

The Commission opposes any mandatory requirement to use third parties to verify completion of tasks, evaluate performance or implement a review and certification program because it would significantly increase the regulatory and economic burden on oil and gas operators, particularly the smaller operators who make up an overwhelming majority of the industry in Texas. Similarly, the Commission does not support an additional mandatory regulatory layer of third parties to support compliance reporting; the use of third party reporting should be a decision of the regulated entities.

The Commission is concerned that EPA did not sufficiently consider availability of control equipment and the significant drop in oil and gas prices when establishing time lines and compliance dates, and has urged EPA to incorporate more flexibility and make sure it prioritizes based on size of emission source.

The Commission supported exemptions for low production well sites of less than 15 barrels of oil equivalent or less per day and sites with less than 300 SCF/bbl gas-to-oil ratio. The Commission also urged EPA to establish other exemptions for small oil and gas sites based on reasonably limited emissions or equipment, and is disappointed that EPA included low production well sites in the final rule.

With respect to leak detection and repair, the Commission expressed concerns about the use of optical gas imaging as the *only* method of demonstrating compliance with leak detection and repair requirements. We appreciate that the final rule did not limit the compliance tool to this

technology, but remain concerned that allowing operators to use "Method 21" as an alternative still precludes the use of other comparable leak detection methods and inhibits innovation by minimizing the value of research into other new leak detection technologies and methods at oil and gas sites.

The Commission has continued to suggest that EPA establish a workgroup with State regulatory, environmental and industry representatives to simplify reports and submittals needed to comply with federal oil and gas air regulations, including elimination of duplicate requirements and publication of straightforward implementation and support materials to help industry achieve compliance.

Methane Emissions – Source Determination Rule

EPA had proposed two options for determining whether two or more properties in the oil and natural gas sector are "adjacent," and both Option One and Two raised significant implementation issues that would create an overly broad aggregation policy and cause uncertainty by: slowing down the permit review process; transforming minor sources to major sources; usurping State authority to review and regulate what would otherwise be minor sources; and failing to take into account the realities of oil and gas operations. The Commission expressed its opposition to both Option One and Two.

The Commission opposes establishing the distance of one-quarter mile within which multiple sites will be treated as a single source. Texas rules currently use a distance test as guidance that also provides the flexibility necessary to aggregate sources where circumstances require.

Texas has a statute that specifically addresses aggregation of oil and gas minor sources. Texas Health and Safety Code section 382.051964 allows aggregation of oil and gas production facilities under permit by rule or standard permit that meet four criteria. The facilities must be under common control, under the same first two-digit major grouping of Standard Industrial Classifications, less than one quarter mile from each other and operationally dependent. This conjunctive approach ensures that only those sources that are operationally dependent are aggregated as one source consistent with federal law, and uses the common sense notion of "plant" and the plain meaning of the term "adjacent." By capturing sites that merely share equipment and are within ¼ mile of each other, the new federal rule will deprive the State of the flexibility to develop and apply appropriate guidance and State law that best comports with activities in the State.

Texas regulates small oil and gas sources through its minor source permitting program, applying stringent control requirements appropriate for this source type. The vast majority of oil and gas sources are authorized under permits by rule or standard permits. The controls required under these authorizations are appropriate to the equipment at the facility or site and are developed to be protective of public health.

Furthermore, oil and gas facilities must comply with many other applicable State and/or federal standard(s). Many of the authorized sites utilize flares, vapor recovery units and/or other collection/combustion devices to control and collect emissions to comply with the existing State and federal regulations. Therefore, aggregation of these sites would not result in lower emissions. For example, NSPS OOOO applies to most oil and gas sites constructed, modified or reconstructed after August 23, 2011, and as such, the sites may be required to control storage vessel emissions based on their potential to emit. Since these control requirements are on a per tank basis, EPA's rule would result in aggregation of these sites, but would not result in any increase in the number of facilities being controlled or any reduction in emissions. The practical result is that the aggregated sites would be subject to an unnecessary and more onerous, time consuming and less predictable permitting process, stalling growth and production without any detectable environmental or health benefit.

Finally, the stated policy reasons for this rule's focus on the oil and gas sector are wrong. First, EPA claims that this industry sector should be looked at separately from all other sectors, "….because permitting decisions are difficult and time-consuming. Providing this guidance will promote a consistent regulatory treatment for this industry." In Texas, the Texas Commission on Environmental Quality has developed streamlined permitting mechanisms for minor sources, and the oil and gas sector specifically, that significantly reduce review timeframes. Permitting decisions for the oil and gas industry are not more difficult or time consuming than other industry sectors. EPA states that one potential outcome of aggregating oil and gas sources is to create major sources, thus requiring more stringent BACT-based controls on emissions. Texas already authorizes oil and gas minor sources and applies stringent control requirements for these

types of sources. In addition, by EPA's own admission, a better approach to controlling emissions from the oil and gas sector is through the NSPS or NESHAP programs, and in ozone nonattainment areas, control techniques guidelines. These programs do not rely on an expansive definition of a source for applicability, thus they will typically apply to minor sources.

EPA should have abandoned this source determination rule for Major New Source Review and Title V and allowed States to utilize their existing processes to develop additional guidance and policies that best fit their State. This approach would afford the States the deference to which they are entitled to administer their minor source programs in accordance with their SIP-approved programs. Texas' recommendation is that EPA should have retained the existing definition and interpretation of adjacency, allowed the States to maintain applicable minor source programs as provided under the FCAA as Texas has done and further allowed the States to develop and adopt appropriate major source guidance for PSD and NNSR programs and the Title V programs.

EPA Clean Power Plan

Since EPA published the Clean Power Plan in August, 2015 it has been challenged in the courts by Texas and a large number of other States, companies in the fossil fuel industry, and industry groups as a federal power grab that would cause severe economic damage. The Supreme Court stayed the rule in February,2016 pending completion of the litigation.

The Supreme Court's decision to temporarily halt Obama's Clean Power Plan is encouraging for Texas, and for the other 26 State that adamantly oppose this radical climate change policy. Our State's coalition makes an indisputable case: these expensive measures to cut carbon emissions and reduce coal use will strain our grid, and Texans and all other Americans will pay the consequences with obscenely high electric bills. The President disregards the Constitutional limits of his office and public opinion to forward his own liberal agenda that combats fossil fuels and favors unreliable and costly alternative energy sources. In promoting this agenda, he has allowed EPA to become the mouthpiece for ideological propaganda. I hope the Court continues to realize that this tyrannical intrusion into the free market is costly, illogical and uncalled for.

EPA's final rule titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (aka the Clean Power Plan) was the latest in a series of regulations that will increase the cost of electricity and natural gas by nearly $300 billion in 2020 compared with 2012, according to a study released by Energy Ventures Analysis, Inc. The study, "Energy Market Impacts of Recent Federal Regulations on the Electric Power Sector," demonstrates the heavy financial burden EPA's collection of regulations will force on American families, businesses, and manufacturers through soaring energy costs.

This rule seeks to prompt an aggressive transformation of electricity generation in Texas and nearly every other State by systematically "decarbonizing" power generation and ushering in a new "clean energy" economy. Although Congress has debated a number of bills designed to achieve that very result, it has not adopted any such legislation. Frustrated with Congress, EPA apparently discovered sweeping authority in section 111(d) of the Clean Air Act (a provision that

has been used only five times in 45 years) to issue the Clean Power Plan that forces States to fundamentally alter electricity generation throughout the country.

EPA's audacious assertion of authority in this rule is more far-reaching than any previous effort by the agency. According to EPA, section 111(d) authorizes it to use the States to impose on fossil fuel-fired power plants emission reduction requirements that are premised not just on pollution control measures at the regulated plants, but also (and predominantly) on reducing or eliminating operations at those plants and shifting their electricity generation to competitors, including those not regulated by the rule. Those reduction requirements far exceed what EPA has found may be achieved individually by even a new plant with the agency's state-of-the-art "best system of emission reduction." Rather, the reduction requirements can be met only by shutting down hundreds of power plants, limiting the use of others and requiring the construction and operation of other types of facilities preferred by EPA—a directive EPA euphemistically calls "generation shifting."

EPA's legal theory is at odds with the plain language of section 111 and certainly is not clearly authorized by that provision. Section 111(d) authorizes EPA to establish procedures under which Texas and other States set "standards of performance for any existing source," i.e., standards that are applicable to a particular source within a regulated source category. Those standards must reflect the application of the best system of emission reduction to that source, i.e., to a building, structure, facility or installation. In other words, EPA may seek to reduce emissions only through measures that can be implemented by individual facilities. Indeed, for 45 years, EPA has consistently interpreted section 111 standards of performance in this way — not only in the five

instances in which it has addressed existing sources, but also in the more than one hundred rulemakings in which it has adopted standards for new sources.

The Clean Power Plan is also unlawful because it prevents Texas and other States from exercising the authority granted to them under section 111 to establish standards of performance and to take into consideration the remaining useful life of an existing source when applying a standard to that source.

Finally, the Clean Power Plan violates the Constitution. In order to pass constitutional muster, cooperative federalism programs must provide Texas and the other States with a meaningful opportunity to decline implementation. But it does not do so; States that decline to take legislative or regulatory action to ensure increased generation by EPA's preferred power sources face the threat of insufficient electricity to meet demand. The Clean Power Plan is thus an act of commandeering that leaves States no choice but to alter their laws and programs governing electricity generation and delivery to accord with federal policy.

If upheld, the Clean Power Plan would lead to a formidable, unprecedented and unlawful expansion of EPA's authority. The resulting restructuring of nearly every State's electric grid would exceed even the authority that Congress gave to the Federal Energy Regulatory Commission, the federal agency responsible for electricity regulation. But EPA's theory of "generation shifting," which is not about making regulated sources reduce their emissions while operating but rather about preventing many sources from operating at all, does not stop with the power sector. EPA's newly-discovered authority threatens to enable the agency to mandate that

any existing source's owners in any industry reduce their source's production, shutter the existing source entirely and even subsidize their non-regulated competitors. Section 111(d) would be transformed from a limited provision into the most powerful part of the Clean Air Act, making the agency a central planner for every single industry that emits carbon dioxide. Congress did not intend and could not have foreseen such a result when it passed the provision more than 45 years ago. I consider such an outcome to be abhorrent and unconstitutional.

Mercury and Air Toxics Standards

EPA's Mercury and Air Toxics Standards, or MATS, was finalized in February 2012 and was scheduled to take effect in April 2015. The rule as originally proposed required reductions in the volume of various emissions from coal- and oil-fired power plants with a capacity of at least 25 megawatts; it includes mercury and other metals (arsenic, chromium and nickel), as well as "acid gases" such as hydrochloric acid and hydrofluoric acid.

Texas, numerous other States and other petitioners sought review of the Mercury Rule in the D.C. Circuit, challenging EPA's failure to consider costs when making the threshold decision whether it was appropriate to regulate at all. The D.C. Circuit rejected all of the challenges to the Rule, including upholding EPA's threshold decision not to consider costs. In *Michigan v. EPA*, the U.S. Supreme Court reversed the D.C. Circuit's decision on the costs issue. The Court concluded that EPA exceeded its lawful authority: "EPA strayed far beyond those bounds when it read § 7412(n)(1) to mean that it could ignore cost when deciding whether to regulate power plants." The Court held that EPA "must consider cost—including, most importantly, cost of

compliance—before deciding whether regulation is appropriate and necessary." The Court reversed the judgment of the Court of Appeals for the D.C. Circuit and remanded the cases for further proceedings.

That decision sent the rule back to the D.C. Circuit for further review, which ruled against the states and industry groups that argued the entire rule should be scrapped. Instead, the appeals court allowed the rule to remain in effect while the agency made the revisions ordered by the Supreme Court. In April, EPA issued its new analysis of the costs of this rule, claiming to curb mercury emissions from power plants. The U.S. Supreme Court has refused to review the lower court's decision to allow this rule to remain in place during further proceedings.

While the MATS rule primarily impacted coal-fired power generation, it exemplifies this administration's attitude toward regulation: ignore the consequential compliance burdens and costs; ignore the impact on the economy, the cost of electricity and jobs; ignore the State's ability to manage their resources effectively; and ignore the limits of statutory authority. In nearly all of its CAA regulation, the Obama EPA has surpassed the limits of its authority, resulting in years of expensive and wasteful litigation that forces the courts to rein it in. And by including short compliance periods in their illegal regulations, EPA has accomplished its desired result even when the regulation is ultimately held invalid. By the time the Supreme Court held that EPA acted unreasonably when it made power plants subject to regulation without considering the cost of such regulation, for most of the affected companies the ruling was too late. Under EPA's aggressive compliance deadlines, most had already spent billions of dollars to comply. In the months that passed between the time MATS was first promulgated and the case

was decided by the Supreme Court, jobs were lost, power plants were closed and enormous costs were incurred. So while the MATS litigation continues to this day, EPA is proud of having accomplished it objectives with their unlawful MATS regulations.

History shows that decreases in emissions and improved environmental conditions come about as a result of innovative technological advances and market-driven efficiencies, not through the massive regulatory overreach of federal bureaucrats. The Railroad Commission of Texas takes its role as a steward of State resources very seriously. That said, our rulemaking decisions are based on sound science and potential economic impacts to all Texans, mindful that it is from industry that these entrepreneurial ideas emerge. When businesses are forced to operate as bureaucracies, which EPA seems intent on achieving through its unwarranted and overreaching rules, innovation is stifled leaving both consumers *and* the environment to pay the price. EPA's policies under the Obama Administration have consistently striven to eliminate competitive energy markets while ignoring engineering realities, sound science and economic impacts. Simultaneously, EPA has circumvented both the authority delegated to it by Congress and the rights of state regulatory agencies to establish their own rules.

I respectfully urge this Committee to take the Railroad Commission's comments on the CAA rulemaking by EPA seriously; prevent this administration from further assuming unconstitutional powers and obtrusive regulations on the State; and ensure that our nation continues to serve as the global energy leader we are today.

Thank you again for the opportunity to speak and I'd be happy to answer any questions regarding my testimony.