EPA Public Hearing on “Clean Power Plan” Proposed Rule
July 29, 2014
Comments of Alabama Attorney General Luther Strange

Good morning. Thank you for the opportunity to comment on this important matter here today. My name is Luther Strange, and I am the Attorney General of Alabama. As Attorney General, my sworn duty is to uphold the rule of law for the 4.8 million hardworking men and women in my state. That duty includes enforcing the environmental laws that help protect our natural resources and the health of our citizens. One of the most important matters I am involved in as Attorney General is serving as coordinating counsel for the Gulf States in the historic BP oil spill litigation. Alabama’s coastline was covered in oil and our economy was shut down for months as a result of the spill – so I understand firsthand the importance of environmental regulations.

With that said, my comments today reflect a continuing concern with this Administration’s approach to environmental regulation. EPA’s proposed guidelines for existing power plant performance standards under Clean Air Act section 111(d) are simply the most recent example of the Federal Government usurping authorities properly delegated to the States.

The defense of this proposal will be that the States have “flexibility,” but providing the States with a narrow range of costly policy choices, which most of the States did not choose for themselves, does not provide any actual flexibility and still produces the same outcome—higher electricity prices and decreased generation. Repeating over and over the word “flexibility” is not an adequate defense or adequate answer to the low-income consumers in my state, or any other state, who will ask why they must pay more to reduce CO2 emissions when those reductions cannot and will not impact the global climate.

Congress did not intend for Clean Air Act section 111(d) to have such far-reaching consequences for the American people. Indeed, to prevent impacts such as those that will flow from EPA’s proposed emission guidelines, Congress took care to limit EPA’s authority under section 111(d). Given the enormous burdens that would be
imposed by EPA’s proposed guidelines, however, it may be obvious that EPA has simply disregarded the limits of the law. These limits, moreover, are not questionable or controversial; they are express and clear elements of the Clean Air Act.

First, the Clean Air Act forbids regulating sources under section 111(d) if they are regulated under section 112 of the Act. Existing electric utility generating units are regulated under section 112. Second, the Clean Air Act also forbids section 111(d) regulations that are based on emission reductions that cannot be achieved at individual facilities but that instead rely on reductions that require actions by an entire system, including facilities acting in tandem, state governments, and even electricity consumers. EPA’s proposed emission guidelines fully embrace a system-wide approach to regulation. Third, EPA has improperly attempted to limit section 111(d)’s express statutory delegation of authority to the States, and, in doing so, EPA’s proposal not only rejects state discretion under the Clean Air Act but jettisons decades of unquestioned precedent establishing state jurisdiction over electricity markets.

In conclusion, the State of Alabama vigorously opposes EPA’s proposed mandate to effectively restructure the electric sector, as it would have disastrous consequences for electric reliability and the economy. Those consequences, moreover, would all stem from a patently unlawful application of the Clean Air Act. EPA’s proposal seeks to expand the scope of section 111(d) in an unprecedented manner. It would do so at the expense of State authority that is expressly identified and preserved in the Clean Air Act and in the unquestionable jurisdiction of States over intrastate electricity markets. And it would do all of these things for no discernible benefit, given the increasing emissions of China and other developing economies. There is no rationale that can support such a regulation, and the proposed rule should be withdrawn.