



March 27, 2023

**To:** Department of Energy

**Subject:** Energy Conservation Program: Energy Conservation Standards for Distribution Transformers, 88 Fed. Reg. 1722 (EERE–2019–BT–STD–0018) (proposed Jan. 11, 2023)

The Institute for Policy Integrity at New York University School of Law<sup>1</sup> respectfully submits the following comments on the Department of Energy’s application of the social cost of greenhouse gases in its notice of proposed rulemaking for distribution transformers (“Proposed Rule”),<sup>2</sup> and in the associated technical support document (“TSD”).<sup>3</sup>

**Even though the Proposed Rule’s costs would exceed its benefits without considering climate effects,<sup>4</sup> DOE appropriately applies the social cost estimates developed by the Interagency Working Group on the Social Cost of Greenhouse Gases (“Working Group”) to its analysis of climate benefits.** The Working Group developed these estimates through a rigorous and transparent process incorporating the best available science available at the time.<sup>5</sup> These values are widely agreed to underestimate the full social costs of greenhouse gas emissions.<sup>6</sup> For now, however, they remain appropriate to use as conservative estimates—they have been applied in dozens of previous rulemakings<sup>7</sup> and upheld in federal court.<sup>8</sup>

In November, the Environmental Protection Agency released a draft update to the social cost of greenhouse gases that faithfully implements the roadmap laid out in 2017 by the National Academies of Sciences and applies recent advances in the science and economics on the costs of climate change (“Draft Update”).<sup>9</sup> These updated valuations further confirm that the Working Group’s climate-damage values represent conservative underestimates. **DOE should consider applying sensitivity analysis using EPA’s draft climate-damage estimates.**

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<sup>1</sup> No part of this document purports to represent the views, if any, of New York University School of Law.

<sup>2</sup> Energy Conservation Program: Energy Conservation Standards for Distribution Transformers, 88 Fed. Reg. 1722 (proposed Jan. 11, 2023) [hereinafter “Proposed Rule”].

<sup>3</sup> Dep’t of Energy, Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Distribution Transformers (Dec. 2022) [hereinafter “TSD”].

<sup>4</sup> See Proposed Rule, 88 Fed. Reg. at 1727 tbl.1.5 (finding that consumer operating cost savings exceed total costs when considered at both a 3% and 7% discount rate).

<sup>5</sup> *Id.* at 1791.

<sup>6</sup> Interagency Working Group on the Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide – Interim Estimates Under Executive Order 13,990 at 4 (2021) [hereinafter “IWG, 2021 TSD”]. Richard L. Revesz et al., *Global Warming: Improve Economic Models of Climate Change*, 508 NATURE 173 (2014) (note that co-author Kenneth Arrow was a Nobel Prize-winning economist).

<sup>7</sup> Peter Howard & Jason A. Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 COLUM. J. ENV’T L. 203, 270–84 (2017) (listing all uses through mid-2016).

<sup>8</sup> *Zero Zone v. Dept. of Energy*, 832 F.3d 654, 679 (7th Cir. 2016).

<sup>9</sup> EPA External Review Draft of Report on the Social Cost of Greenhouse Gases (Sept. 2022) (Docket No. EPA-HQ-OAR-2021-0317) (“Draft Update”).

## **DOE Appropriately Applies the Working Group’s Climate-Damage Estimates**

DOE provides compelling justifications for readopting the Working Group’s estimates<sup>10</sup> that it briefly abandoned under the Trump administration. As detailed in the attached June 2022 comments on DOE’s recent proposed standards for room air conditioners, which we incorporate by reference, there are numerous legal, economic, and policy justifications that further bolster DOE’s adoption of the Working Group’s climate-damage valuations.<sup>11</sup>

The attached comments make four main points. First, they offer more detailed support for adopting a global framework for valuing climate impacts. These include legal justifications based on the Energy Policy and Conservation Act, the National Environmental Policy Act’s broad government-wide policy mandates, the Administrative Procedure Act’s requirement to consider all important factors, executive orders, and international agreements.<sup>12</sup>

Second, the comments offer additional justification for adopting the range of discount rates endorsed by the Working Group and for its decision not to apply a 7% capital-based discount rate to climate impacts. Besides climate effects presenting special legal, economic, and policy considerations for the discount rate, it is appropriate generally for DOE to focus its analysis of this rule on consumption-based rates given that most costs and benefits are projected to fall to consumption rather than to capital investments.<sup>13</sup>

Third, the comments offer further justification for relying on the Working Group’s other methodological choices, including the fact that the Working Group applied a transparent and rigorous process that relied upon the best-available and most widely cited models for monetizing climate damages. The attached comments provide detailed rebuttals to criticisms of the Working Group’s methodology from opponents of energy, consumer-rights, and climate regulation.<sup>14</sup>

Lastly, the attached comments suggest that DOE clearly state that any criticisms of the social cost of greenhouse gases are moot in this rulemaking because the Proposed Rule is cost-justified without any climate benefits.<sup>15</sup>

Accordingly, for the reasons set out in the attached comment letter, it is appropriate for DOE to continue to rely on the Working Group’s valuations of the social cost of greenhouse gases as conservative estimates when it finalizes the Proposed Rule.

## **DOE Should Conduct Further Analysis Using EPA’s Draft Updated Estimates**

While DOE’s application of the Working Group’s valuations is legally justified, the agency should consider conducting additional sensitivity analysis using draft climate-damage valuations that EPA recently published.<sup>16</sup> EPA’s draft valuations faithfully implement the

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<sup>10</sup> See Proposed Rule, 88 Fed. Reg. at 1790–93; TSD at 14-1 to 14-5.

<sup>11</sup> Ctr. for Climate & Energy Solutions et al., Comments to DOE on Monetizing Greenhouse Gas Emissions in Energy Conservation Program: Energy Conservation Standards for Room Air Conditioners (EERE-2014-BT-STD-0059) (proposed Apr. 7, 2022) (June 6, 2022).

<sup>12</sup> *Id.* at 5–15.

<sup>13</sup> *Id.* at 17–23.

<sup>14</sup> *Id.* at 25–35.

<sup>15</sup> *Id.* at 35; see also *supra* note 4 and accompanying text.

<sup>16</sup> Draft Update, *supra* note 9.

roadmap laid out in 2017 by the National Academies of Sciences for updating the social cost of greenhouse gases<sup>17</sup> and apply recent advances in the science and economics on the costs of climate change. EPA’s methodology and valuations are consistent with those applied by a range of expert independent researchers, and while EPA’s draft valuations remain underestimates,<sup>18</sup> they more fully account for the costs of climate change by incorporating the latest available research on climate science, damages, and discount rates.

Sincerely,

Peter Howard, Economics Director  
Max Sarinsky, Senior Attorney

**Attachments:**

- 1) Ctr. for Climate & Energy Solutions et al., Comments to DOE on Monetizing Greenhouse Gas Emissions in Energy Conservation Program: Energy Conservation Standards for Room Air Conditioners (EERE-2014-BT-STD-0059) (proposed Apr. 7, 2022) (June 6, 2022)

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<sup>17</sup> Nat’l Acads. Sci., Engineering & Med., Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide (2017) [hereinafter “NAS 2017 Report”].

<sup>18</sup> Draft Update, *supra* note 9, at 4 (“[B]ecause of data and modeling limitations . . . estimates of the SC-GHG are a partial accounting of climate change impacts and, as such, lead to underestimates of the marginal benefits of abatement.”); *id.* at 72.