RTR, but rather only a *change in policy* regarding the *same* practices, standards, and control technologies.

Basing revised standards simply on a policy reversal is contrary to the text and structure of Section 112(d)(6), especially when coupled with the tight statutory compliance deadlines provided in Section 112. The Clean Air Act envisions that both EPA *and* the regulated community would be able to monitor evolving trends in emission control technologies and practices, such that regulated could see and plan for potential upgrades that might be needed on the horizon. But when EPA reverses course based on policy, not technological changes, regulated entities do not have similar advance notice when planning capital programs. This is contrary to the statute.

The Proposed Rule's statutory deficiencies are compounded by its proxy-on-proxy structure, where PM (a pollutant independently regulated under the NAAQS program) is used as a stand-in for HAPS. NorthWestern understands the technical rationale for focusing on PM rather than attempting to measure HAPS directly, but the indirectness of the regulation is problematic given the history of the Rule. Moreover, it will not be lost on a reviewing court that the Proposed Rule is a transparent attempt to indirectly regulate greenhouse gas emissions in the immediate wake of *West Virginia v. EPA,* 142 S.Ct. 2857 (2022). For that reason, and because of its severe impacts to Montana and the reliability of the Western Interconnection, there is a significant likelihood that a court will subject the Rule to scrutiny under the Major Questions Doctrine. It is doubtful that EPA's departures from the text and purposes of Section 112(d)(6) would survive such scrutiny.

Independently of statutory and constitutional infirmities, the Proposed Rule is also arbitrary and capricious under the Administrative Procedure Act. In addition to the reasons articulated by Talen, the Proposed Rule and 2023 RTR takes the same practices, standards, and control technologies as were examined in the 2020 RTR, and reaches a polar opposite conclusion. This is textbook arbitrariness. At a minimum, the fact that EPA has reversed course so completely in such a short timeframe likely deprives EPA of any judicial deference it might otherwise have enjoyed. Given the unprecedented methods deployed in the Proposed Rule to determine that the Rule would result in positive net benefits, there is a significant likelihood that the Proposed Rule, if finalized, would be invalidated under the APA.