

United States Senate

WASHINGTON, DC 20510

The Honorable Chris Wright
Secretary
U.S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

February 11, 2026

Secretary Wright:

The Department of Energy's (DOE or Department) plan to repurpose funds that Congress clearly appropriated for carbon capture programs to instead subsidize coal power plants flies in the face of the law. We believe that redirecting these funds may constitute a Purpose Statute violation by misusing the funding as originally appropriated by Congress in the Infrastructure Investment and Jobs Act.

In September 2025, the Department announced the availability of \$625 million in funding to benefit big coal. DOE recently issued a funding opportunity announcement (FOA) on coal-fired generation assets, titled Coal Recommissioning and Modernization. The announcement stated that up to \$525 million would be provided to support "recommissioning, retrofitting, and strategically repurposing" coal-fired generators. The funding detail notes that up to \$350 million will be made available to projects that "may be staged so that near-term reliability upgrades are federally cost shared without requiring immediate Carbon Capture Utilization and Storage (CCUS) installation, while later phases incorporate capture integration, monitoring, reporting, and verification . . . or other carbon-management components," but it does not detail how DOE will ensure these funds support capture technology and that it is installed in later stages. In addition, the Department plans to award up to \$175 million to support the commissioning, recommissioning, or modernization of coal plants located in rural or remote communities.

The Department's Coal Recommissioning and Modernization FOA draws \$350 million from unobligated balances provided explicitly to commercialize carbon capture. Those funds, could now be diverted to recommission coal plants—in clear defiance of congressional intent. The Department is also inappropriately using \$175 million originally provided for energy improvements in rural and remote areas. Those funds were intended to improve rural energy resilience and reliability, while also protecting rural areas from the adverse environmental impacts of electric generation—a requirement enshrined in statute.¹ Additionally, DOE issued a \$100 million FOA titled Improving Efficiency, Reliability, and Flexibility of Coal-Based Power Plants, which similarly relies on the use of carbon capture funding to subsidize coal power.

The Constitution gives Congress the power of the purse and exclusive power to appropriate funds. Once a law is enacted, the Constitution requires the president to "take Care that the Laws be faithfully executed." The president cannot substitute his policy preferences for requirements in law, and that includes refusing to spend funds Congress requires the president to spend and steering those investments to unfunded priorities. In this instance, where Congress has authorized

¹ P.L. 117-58.

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and appropriated funds for programs that support carbon capture and other emissions reduction projects, the Department must faithfully execute the law and expend the funds for the purposes provided. Further, if the Government Accountability Office determines that the Department's awards are a violation of the Anti-Deficiency Act, awardees will be required to return all such funding in the future.

The Department is knowingly and intentionally redirecting funds intended to reduce pollution to instead further the Trump administration's policy of propping up coal-fired power plants. This policy will not only cause more pollution in communities nationwide while harming public health and the environment, it will also raise energy costs at a time when the American people are already feeling the pinch with record high energy bills. For these reasons, we request DOE provide responses to the following questions by February 25, 2026:

1. DOE cites the following statutes to justify its authority in the Coal Recommissioning and Modernization FOA: Carbon Capture Demonstration Projects Program — IIJA § 41004(b), EPAAct 2005 § 962(b)(2)(C), 42 U.S.C. § 16292; Carbon Capture Large-Scale Pilot Projects — IIJA § 41004(a), EPAAct 2005 § 962(b)(2)(B), 42 U.S.C. § 16292; and Energy Improvements in Rural or Remote Areas Program — IIJA § 40103(c), 42 U.S.C. § 18712.
 - a. Please explain how moving money to the Coal Recommissioning and Modernization Program from carbon capture programs is consistent with the Purpose Statute and Congressional intent. In responding to this question, please provide the authorities the Department is relying on. For any citation of Other Transaction Authority, please provide a justification, including how its use meets non-duplication requirements, cost-share guidelines and requirements, and how the use of existing contract, grant, or cooperative agreements is not feasible.
 - b. Given that the Coal Recommissioning and Modernization Program has no "immediate Carbon Capture Utilization and Storage (CCUS) installation" requirement, please explain how DOE plans to ensure that these facilities will install CCUS in the future.
 - c. Please explain how this FOA complies with statutory requirements under the Carbon Capture Demonstration Projects Program that funding be made available for not only coal projects, but also projects at natural gas generation facilities and industrial facilities.
2. DOE cites the following statutes to justify its authority in the FOA Part 1 of the Improving Efficiency, Reliability, and Flexibility of Coal-Based Power Plants program: Energy Policy Act of 2005, 42 U.S.C. § 16291, 16292, the DOE Organization Act, 42 U.S.C. § 7101., et seq.
 - a. Please explain how moving money to the Improving Efficiency, Reliability, and Flexibility of Coal-Based Power Plants program from programs focused on carbon capture technologies is consistent with the Purpose Statute and

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Congressional intent. In responding to this question, please provide the authorities the Department is relying on. For any citation of Other Transaction Authority, please provide a justification, including how its use meets non-duplication requirements, cost-share guidelines and requirements, and how the use of existing contract, grant, or cooperative agreements is not feasible.

- b. 42 U.S.C. § 16291(a)(2) outlines an exhaustive list of considerations that programs under paragraph (1) must take into consideration, including promoting diversity of energy supply, decreasing the environmental impact of energy-related activities, decreasing the cost of emissions control technologies, significantly lowering greenhouse gas emissions, and developing carbon removal and utilization technologies, products, and methods, in addition to other goals including improving energy security. Please explain how the FOA Part 1 of the Improving Efficiency, Reliability, and Flexibility of Coal-Based Power Plants takes into consideration all of the statutory objectives under 42 U.S.C. § 16291(a)(2).
 - c. 42 U.S.C. § 16291(a)(3) mandates the Department prioritize projects with the potential to significantly reduce emissions. Please explain how the FOA Part 1 of the Improving Efficiency, Reliability, and Flexibility of Coal-Based Power Plants takes into consideration statutory prioritization requirements under 42 U.S.C. § 16291(a)(3).
- 3. According to the attached internal memo, Deputy Secretary James Danly claims that the Department had “clear statutory authority” to repurpose these funds. The memo cites Other Transaction Authority and existing statutes from IIJA. Please provide the following:
 - a. Please provide additional detail on how Secretary Danly reached this conclusion, what authorities he is relying on, and copies of the two attachments cited in the memo.
 - b. Please provide both the current, and any prior, opinions from the Department’s General Counsel and staff regarding the utilization of funding from the Infrastructure Investment and Jobs Act (PL 117-58) for DE-FOA-0003605 and DE-FOA-0003606.
 - c. Please provide any additional relevant internal documents, memoranda, e-mails, and other written and electronic forms of communication regarding the decision to amend DE-FOA-0003605, including the amendments on October 30, 2025 and January 12, 2026; and modify DE-FOA-0003606, including the modifications on November 17, 2025, December 2, 2025, January 6, 2026, and January 8, 2026. We specifically request this include any and all decision documents.

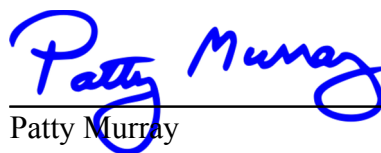
Sincerely,

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Martin Heinrich
United States Senator
Ranking Member, Committee
on Energy and Natural
Resources



Patty Murray
United States Senator
Vice Chair, Committee on
Appropriations