



FEDERAL ENERGY REGULATORY COMMISSION

November 8, 2023

John Barrasso, M.D.
Ranking Member
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Shelly Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Ranking Member Barrasso and Ranking Member Capito:

I share the concerns that you express in your November 2, 2023, letter regarding the shortcomings of the Commission's upcoming Annual Reliability Technical Conference as a forum for exploring the reliability consequences of what you call the Environmental Protection Agency's "Proposed Clean Power Plan 2.0" ("Proposed Rule").¹ Following the Technical Conference, I will provide a more detailed response to your letter.

According to the Second Supplemental Notice announcing the final schedule for the Technical Conference, the portion of the technical conference dedicated to engaging with the EPA on the Proposed Rule is limited to sixty minutes²—*sixty minutes* for a rule that aims to *transform* how the nation's power sector generates electricity—*sixty minutes* for a rule that spans one hundred and eighty-one pages in the *Federal Register*, is accompanied by seventy technical documents (many of which themselves include numerous supporting documents), and which received thousands of comments from the public. As you note in your letter, this cursory treatment stands in stark contrast to the four technical conferences that the Commission convened in 2014 and 2015 to engage the EPA on the implications of the original Clean Power Plan Proposal.³

Perhaps the reason for the limited treatment of the Proposed Rule arises from EPA's own uncertainty as to what reliability impacts the rule will have, as it seems clear that the *EPA did not study the reliability impacts of its proposal* (or, if it did, the analysis is not where the EPA says it is). The

¹ Senator Barrasso & Senator Capito, November 2, 2023, Letter, Docket No. AD23-9-000 (Letter).

² Second Supplemental Notice of Technical Conference, October 30, 2023, Docket No. AD23-9-000 (Second Supplemental Notice).

³ Letter at 1 n.3.



Proposed Rule professes that “EPA has carefully considered the importance of maintaining resource adequacy and grid reliability” in developing its proposal and states that EPA “evaluated the reliability implications of the proposal in the Resource Adequacy Analysis [technical support document or ‘TSD’].”⁴ But this is incorrect. The Resource Adequacy TSD *does not analyze the reliability impacts of the Proposed Rule*. The Resource Adequacy TSD acknowledges the difference between resource adequacy and reliability, explaining that “the term resource adequacy is defined as the provision of adequate generating resources to meet projected load and generating reserve requirements in each power region, while reliability includes the ability to deliver the resources to the loads, such that the overall power grid remains stable.”⁵ The Resource Adequacy TSD then goes on to state that it is “meant to serve as a resource adequacy assessment” of the Proposed Rule.⁶ The unavoidable conclusion to draw from this is that the Resource Adequacy TSD *does not analyze the reliability impacts of the Proposed Rule*.

The explanation for the discrepancy between the text of the Proposed Rule, which declares that EPA studied its proposal’s reliability impacts, and the Resource Adequacy TSD, may lie in comments that EPA received on the Resource Adequacy TSD during the interagency review process which the EPA is required by statute⁷ to include in the record of the rulemaking. Though the record does not disclose the source of the comment, the record contains a version of the Resource Adequacy TSD entitled “Resource Adequacy and Reliability Analysis Technical Support Document.”⁸ This version of the document has a comment on it noting that “[t]he analysis presented . . . focuses on resource adequacy, which is a core component of reliability,” but that “[r]eliability also includes other attributes, including operational considerations in real time and stability analysis or very short time scale, which are not in scope for this analysis.”⁹ The clear implication of this anonymized comment is that the EPA did not, in fact, study reliability, but only a facet of reliability. The final Resource Adequacy TSD that EPA issued alongside the Proposed Rule, drops “reliability” from its title and is called “Resource Adequacy Analysis Technical Support Document.”¹⁰

⁴ New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 88 Fed. Reg. 33240, 33246 (May 23, 2023).

⁵ Resource Adequacy Analysis Technical Support Document, EPA-HQ-OAR-2023-0072-0034, at 2 (May 24, 2023) (Resource Adequacy TSD) (footnote omitted), <https://www.regulations.gov/document/EPA-HQ-OAR-2023-0072-0034>.

⁶ *Id.*

⁷ 42 U.S.C. § 7607(d)(4)(B)(ii).

⁸ EO 12866 Interagency Review, OMB Correspondence, EPA-HQ-OAR-2023-0072-0027, 04-01-23 - TSD - Resource Adequacy – Comments (May 22, 2023), <https://www.regulations.gov/document/EPA-HQ-OAR-2023-0072-0027>.

⁹ *Id.* at 2.

¹⁰ Resource Adequacy TSD.



In an August 8, 2023, letter I filed as a comment on the Proposed Rule, I shared my concerns that EPA did not offer the Commission an appropriate opportunity to study the reliability impacts of the Proposed Rule. In that letter I noted that “FERC is the agency Congress has charged with overseeing the promulgation of the mandatory standards that ensure the reliable operation of the bulk-power system.”¹¹ I further noted the Commission’s experience overseeing the tariffs of the nation’s energy markets, which “play a vital role in providing the economic incentives necessary to ensure resource adequacy in many of the organized markets.”¹² For these reasons, I asked that EPA consider including in its record for the Proposed Rule, the record of the Reliability Technical Conference. Given the agenda, I now fear that the record that the technical conference may develop will likely be insufficient to compensate for the EPA’s failure to consult with FERC when developing the Proposed Rule. As I said in my letter, “[w]hen proposing a rule with such profound consequences, responsible decision-making requires hard data.”¹³ A sixty-minute discussion with EPA might serve as a means to pose questions but will itself do little to develop this hard data.

I, therefore, urge you to continue to encourage the EPA to reopen its comment period, so that EPA can develop an adequate record on the reliability impacts of its Proposed Rule and allow public comment on the analysis. The EPA already appears to be preparing an additional comment period for issues related to small business, so it could do so for the critical issue of reliability as well.¹⁴ I am sure that the North American Electric Reliability Corporation, the entity tasked with developing and enforcing the FERC-approved mandatory reliability standards and the transmission operators charged with maintaining the reliable operation of the nation’s bulk electric system would be happy to coordinate with EPA to share system information, validate assumptions, and bring to the EPA’s attention to all of the variables necessary to conduct a full inquiry into resource adequacy¹⁵ and reliability. FERC could also host additional technical conferences on the subject and

¹¹ Comment of Commissioner James P. Danly on the EPA’s proposed New Source Performance Standards for Greenhouse Gas Emissions, at 2 (Aug. 8, 2023), <https://www.ferc.gov/news-events/news/comment-commissioner-james-p-danly-epas-proposed-new-source-performance-standards>.

¹² *Id.*

¹³ *Id.*

¹⁴ See *EPA to Seek Input on Small Business’ Requests on Power Plant GHG Rule*, INSIDEEPA.COM, Oct. 27, 2023, <https://insideepa.com/daily-news/epa-seek-input-small-business-requests-power-plant-ghg-rule>. A notice also appears on the Office of Information and Regulatory Affairs (OIRA) dashboard of regulatory items that are pending review with OIRA that EPA has an item related to the Proposed Rule pending (RIN: 2060-AV09). See <https://www.reginfo.gov/public/do/eoReviewSearch>.

¹⁵ Though the Resource Adequacy TSD examines resource adequacy, I share concerns that various of the transmission operators raise in comments on the proposed rule. In a joint comment, ERCOT, MISO, PJM, and SPP question the Resource Adequacy TSD’s assumptions:

EPA’s underlying assumptions for the Resource Adequacy Analysis are dependent on modeling the 2022 Inflation Reduction Act (IRA) in the base case. In the Joint ISOs/RTOs’ view, the base-case modeling masks the impact of the proposed Rule by assuming that the retirements have occurred independent of the Proposed Rule.



offer a comprehensive review of the analysis EPA prepares. Such steps are necessary for responsible decision making and, perhaps, necessary to avoid the reliability disasters that the EPA's Proposed Rule may cause.

Sincerely,

James P. Danly
Commissioner

Because the base case shows significant coal and nuclear retirements, renewable and storage additions, and a significant decline in energy generated from natural gas while natural gas capacity significantly increases, the resulting comparison to the modeled proposal shows little impact to the system. This ignores the cumulative impact of the various EPA rules and their intertwined nature, leaving an incomplete picture of the impact of the GHG rule on unit retirement decisions and resource adequacy. This analysis also does not consider the impacts to minimum resource adequacy requirements caused by a changing resource mix. In other words, replacement of dispatchable generation by generation that is, by its nature, not as dispatchable will, among other items, drive requirements for larger amounts of generation (nameplate capacity) in order to maintain an equivalent amount of reliability.

Joint Comments of Electric Reliability Council of Texas, Inc.; Midcontinent Independent System Operator, Inc.; PJM Interconnection, L.L.C.; and Southwest Power Pool, Inc., EPA Docket No. EPA-HQ-OAR-2023-0072, <https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0072-0673>.



Questions

1. According to the agenda for the Technical Conference available on the Commission's website, of just three panels devoted to Proposed Clean Power Plan 2.0, only one, "Afternoon Panel 1," will be led by the Commission.
 - a. Why is only Afternoon Panel 1 to be led by the Commission?

Answer:

The Chairman led the development and planning for the technical conference, so I would refer you to his answer to this question. Given the significance of the issues at stake, I struggle to understand what the reason might be.

I would note that Afternoon Panel 3 includes three state commissioners, one of whom is the first vice president of NARUC, meaning she will soon be the NARUC president. Under the cooperative federalism embodied in the Federal Power Act, State commissioners are our regulatory colleagues, tasked with administering the utility systems of their states. I do not think it demonstrates a proper regard for the importance of their office to consign them to a "Staff Led" panel.

- b. Why is Afternoon Panel 1 to be comprised solely of EPA Principal Deputy Assistant Administrator Goffman?

Answer:

Again, I would refer you to the Chairman's response for why the Technical Conference has been arranged like this.

Given the significance of the Proposed Rule's implications for the power system, I think it is appropriate for the Commission to engage directly with Principal Deputy Assistant Administrator Goffman. My concern, as I explain above, is that the panel is limited to sixty minutes. I do not think this affords sufficient opportunity for the Commission to engage Mr. Goffman at the depth or specificity this subject demands.

- c. Do each of you Commissioners plan to attend and participate in Afternoon Panels 2 and 3?

Answer:

Given the significance of the issues at stake with the EPA's Proposed Rule, and the limited time allocated to their thorough exploration, I believe that I have a responsibility to engage fully in each of the panels.



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- d. For any Commissioner who does not plan to attend and participate in Afternoon Panels 2 and 3, why have you chosen not to participate?

Answer:

Not Applicable.