

Testimony of

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Before the

U.S. House Committee on Energy and Commerce

Subcommittee on Environment, Manufacturing and Critical Materials

“Clean Power Plan 2.0: EPA’s Effort to Jeopardize Reliable and Affordable Energy for States”

November 14, 2023

Chairman Johnson, Ranking Member Tonko, and members of the Subcommittee, thank you for the opportunity to testify here today. My name is L. David Glatt, and I am the Director of the North Dakota Department of Environmental Quality (Department). The Department works in cooperation with the government at all levels, industry, and the public to establish and implement protective programs and standards to help maintain and improve environmental quality. The U.S. Environmental Protection Agency’s (EPA) proposed rules to limit greenhouse gas (GHG) emissions from new and existing

generating units requires stringent and unproven carbon dioxide (CO₂) emissions controls at coal-fired electric generating units (EGUs) to be implemented in unrealistic time frames. The proposed Clean Power Plan 2.0, if finalized, would usurp the authority and discretion of North Dakota and its respective agencies responsible for implementing environmental and energy policy to maintain and enhance the economic and general welfare of North Dakota.

North Dakota Overview

The Department has primacy for upholding State and federal environmental laws and regulations within North Dakota State borders except tribal and reservation lands. At the core of its day-to-day operation the Department promotes a Vision for a sustainable, high-quality environment for current and future generations. Through the Department's consistent implementation of applicable science and the law North Dakotan citizens enjoy some of the cleanest air, water and land in the nation. North Dakota meets all federal and State ambient air quality standards for all criteria air pollutants and has been designated by EPA as in attainment or unclassifiable for all criteria air pollutants.

As a major energy producing State (from significant lignite coal, oil, natural gas, hydro and wind resources), that supplies clean, reliable and affordable energy to the Midwest region, North Dakota has an unmistakable sovereign interest in regulating the responsible development of its natural resources and their use. For over 20 years, North Dakota has actively and financially supported the development and demonstration of clean coal technologies, including carbon capture and sequestration/storage (CCS). Research has

also identified North Dakotas' unique geology ideal for safe and permanent geologic storage of CO₂. North Dakota was the first State to receive primacy under the Safe Drinking Water Act for Class VI injection wells, which is necessary for the long-term storage of CO₂ captured from industrial and energy related sources. Several Class VI permits have been approved in North Dakota with projects currently or in the near future, designed to sequester CO₂. It should be no secret that North Dakota is among the leaders in CCS technology not only in policy but also in practice. The reality is that CCS is still in the development and demonstration stage, as recognized by programs administered by the U.S. Department of Energy. This reality is in direct contrast to the U.S. EPA Clean Power Plan 2.0 proposal which claims CCS is "adequately demonstrated" at commercial scale for EGUs in the United States.

Comments of the State of North Dakota submitted to EPA on August 8, 2023, explain the significant legal and technical deficiencies associated with the proposed Clean Power Plan 2.0.¹ Today, I will highlight how the EPA's proposal would have profound adverse impacts on North Dakota and the upper Midwest region's electric power sector.

¹ See [EPA-HQ-OAR-2023-0072-0752](#), Comments of State of North Dakota on EPA's Proposed Rule: 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 ("Proposed Rule"). North Dakota incorporates the referenced comment letter documents into its testimony herein.

Concerns with EPA's Proposed Clean Power Plan 2.0

State Engagement:

The Department is not opposed to environmental regulation. However, the Department is adamantly opposed to the process EPA has taken with the proposed Clean Power Plan 2.0. EPA did not engage the Department (and all entities of North Dakota government, for that matter) in a process to work collaboratively and cooperatively to gather accurate information during the rule development process. EPA's approach has ignored their publicly stated goals of meaningful engagement with states working through the construct of cooperative federalism.

Unfortunately, failing to meaningfully engage with State partners has become a common practice for EPA as noted by recently proposed regulations to include the climate rules, mercury and air toxics standards, regional haze plans, ozone transport plan, oil and gas standards, and particulate matter standards, as well as many other rule proposals under consideration. In addition, EPA has not evaluated how the proposed rules interrelate and potentially create implementation challenges. The Department believes if EPA was genuinely interested in cooperative federalism and doing what's best for the citizens and environment, they would have engaged directly with the Department, other states and industry to promote realistic environmental protection goals while at the same time addressing energy security and electrical grid reliability concerns.

EPA also lacks the legal authority to unilaterally impose GHG emission limits aimed at eliminating coal fired EGUs that cut States out of the decision-making process. EPA

needs to be reminded that Congress gave the States a primary decision-making role in regulating air emissions from existing generating units. In the CPP 2.0 proposal, EPA is promoting yet another circumvention of the state-federal cooperative-federalism “partnership” that Congress called for in the Clean Air Act.

Technology Development:

There is tremendous promise for CCS, resulting from North Dakota’s ongoing and significant state/private investments in developing and implementing technologies aimed at successfully capturing and geologically storing carbon emissions in North Dakota. The Department is in the final stages of the air quality permitting process, proposing to build one of the world’s largest full-scale CCS facility at a coal-fired EGU to be located in North Dakota. Contrary to EPA’s claims, this is the first of its kind and size proposed in the United States or the world. Given that this is the first potential CCS project of such significant magnitude and has yet to be constructed, CCS has not yet been “adequately demonstrated.”

The current reality is that full-scale CCS is still in the development and demonstration stage, which is confirmed by programs administered by the U.S. Department of Energy that include legislative appropriations for demonstration projects well into the future. As such, the Department believes that the technology does not yet meet the statutory requirements of Clean Air Act Section 111(a) for technology that “has been adequately demonstrated.” Furthermore, CCS retrofit technology is definitely not ready for industry

wide application as proposed in the CPP 2.0, especially considering the unrealistic implementation time frames.

Infrastructure Development:

Industry-wide CCS implementation will also require establishing ancillary infrastructure, such as pipelines and underground storage capacity, which have long time frames to develop for proper geologic CO₂ transport and sequestration. The accelerated compliance timeline of 5 years proposed by EPA is unrealistic and cannot be met. A more realistic timeframe for CCS deployment and related infrastructure and equipment has been demonstrated by the University of North Dakota's Energy and Environmental Research Center and observed by the Department to be more than 10 years (assuming that the technology has been adequately demonstrated). In addition, infrastructure, which includes pipeline siting, environmental impact evaluations, local approval, permitting and construction, in many cases, may take more than 15 years to complete.

In addition to full-scale CCS technologies not yet being "adequately demonstrated" and not yet considered to be "off-the-shelf" products that can be just "plugged-in," they may not be deemed to be economically reasonable at this time unless significant subsidies are in place. This technological uncertainty and lack of commercial availability, paired with financial risk, will only increase the cost of electricity without a direct measurable improvement to the environment. With the added pressure and unrealistic expectations

of the CPP 2.0, we are concerned that the proposed rule will move states and industries away from needed research and technology development in the future.

Social Impact – Access to Energy:

It is critical North Dakota citizens have access to clean, reliable, and affordable energy (electricity and natural gas), through responsible management of North Dakota’s natural resources and environment. In addition, it is critical to ensure sufficient generation of electricity that is reliable and affordable and ultimately managed through the appropriate Regional Transmission Organizations. Fostering the development and potential wide-scale commercial deployment of CCS helps achieve these critical needs.

We are concerned that the proposed Clean Power Plan 2.0 will increase costs, which, compounded with inflation, will negatively impact the affordability of electric and gas services, resulting in a disproportionate effect on low-income citizens, in directly contradicting the Biden Administration’s Environmental Justice priorities. Given the-rural nature of North Dakota and the region, pricing low-income citizens out of an affordable and reliable energy supply could create a social justice issue with devastating impacts on rural citizens.

Implementation Timeline:

The proposed Clean Power Plan 2.0 requires that North Dakota and other States submit their State Implementation Plans (SIPs) to EPA within two years following issuance of a final rule – meaning that EGUs without federally enforceable retirement dates (such as

2032, 2035, or 2040) will need to decide their remaining operating lifetimes within the 2024-to-2026-time frame.

Given EPA's proposed unrealistic time frames, coal fired EGUs will not have time to wait for SIP approvals before having to finance, permit, and construct a CCS facility including all its ancillary equipment, such as pipelines and underground storage capacity. This is further compounded by EPA's backlog of SIPs awaiting review and approval for many other environmental rules. It's clear that the timelines that EPA proposes are not realistic or achievable.

The federally enforceable retirement dates proposed by EPA in the CPP 2.0 dictate and arbitrarily set the remaining useful life of North Dakota EGUs without consideration of each of the EGU's unique characteristics. This is in direct contrast with Clean Air Act Section 111(d), which specifies a process that includes consideration of the remaining useful life given each unit's physical characteristics (e.g., size, type of coal combusted, boiler technology, capacity factor). Premature coal-fired EGU retirements will result in North Dakota (and the Region) losing grid reliability as baseload and dispatchable generating sources if EGUs are forced to close. Success in providing grid reliability and affordability relies heavily on delaying coal-fired EGU retirements until actual, feasible solutions can be implemented.

The ability to maintain reliability with an influx of new intermittent, weather-dependent renewable resources does not address the impacts of potential premature baseload coal-fired EGU retirements and may result in significant uncertainty in the power grid. The

reliability and affordability of electrical energy plays a critical role in sustaining lives and livelihoods in modern society.

Conclusion:

The Department does not understand why EPA has not completed a thorough evaluation of the proposed CPP 2.0 to include technology availability, infrastructure needs, environmental justice impacts, and other adverse impacts related to grid reliability. In a northern climate, stress and potential failure of the grid would result in health and potentially life-threatening consequences for all citizens in the region.

North Dakota is in a unique position as a leader among the States for demonstration and ongoing development of CCS not only in policy but also in practice while protecting the environment. Due to its many faults, lack of a complete impact evaluation and unknown adverse consequences, not easily reversed if implemented, EPA must withdraw the proposed Clean Power Plan 2.0 and reevaluate a future path forward by first engaging directly with states including North Dakota and the regulated sources to gather appropriate data and develop potential practical alternatives with a sound legal and scientific foundation. The Department is confident that this process would result in a regulation based on science and the law, achievable, and protects the environment while maintaining reliable and affordable electric energy and gas services.

Thank you again for the opportunity to be here and I will gladly answer any questions.