

United States Senate  
WASHINGTON, DC 20510

June 30, 2023

The Honorable Willie L. Phillips  
Chairman

The Honorable James Danly  
Commissioner

The Honorable Allison Clements  
Commissioner

The Honorable Mark C. Christie  
Commissioner

Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

Dear Chairman Phillips and Commissioners:

Last month, the Environmental Protection Agency (“EPA”) published a proposal that would regulate greenhouse gases from our nation’s fossil-fueled power plants in the *Federal Register* (“Proposed Clean Power Plan 2.0.”)<sup>1</sup> The proposal presents unjustifiable claims about the future availability of technologies – including carbon capture, clean hydrogen, and the related infrastructure – used to power our electric grids. In light of recent testimony before Congress and the projected impact of the Proposed Clean Power Plan 2.0, we ask you to convene as soon as possible a series of technical conferences to assess the potential impact of the proposed rule on electric reliability. It is important that you act promptly as the EPA has already denied reasonable requests for a 60-day extension of the comment deadline;<sup>2</sup> EPA granted only a 15-day extension, and the comment deadline is now August 8, 2023.<sup>3</sup>

As each of you has readily acknowledged, Congress directly charged the Federal Energy Regulatory Commission (“FERC” or “the Commission”) in the Federal Power Act with protecting electric reliability through mandatory reliability standards. More generally, Congress looks to the Commission to safeguard the quality of the nation’s interstate electric and natural gas service.

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<sup>1</sup> *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 (May 23, 2023).

<sup>2</sup> See, e.g., *ISO/RTO Council’s Request for Extension of Comment Period*, EPA, EPA-HQ-OAR-2023-0072, filed June 8, 2023 (requesting 60-day extension of comment period).

<sup>3</sup> *Extension of Comment Period for Clean Power Plan 2.0*, 39 Fed. Reg. 39390 (June 16, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-06-16/pdf/2023-12834.pdf>.

The Senate Committee on Energy and Natural Resources recently held two hearings that demonstrated the unprecedented and growing risks to electric reliability in the United States. In the first hearing, Chairman Phillips and Commissioners Danly and Christie outlined these risks.<sup>4</sup>

Commissioner Danly warned of “an impending, but avoidable, reliability crisis” caused by “public policies that are otherwise designed to promote the deployment of non-dispatchable wind and solar assets or to drive fossil-fuel generators out of business as quickly as possible.”<sup>5</sup> Commissioner Christie explicitly warned about a “looming reliability crisis” if “the far too rapid subtraction of dispatchable resources, especially coal and gas” continues unabated.<sup>6</sup> Chairman Phillips said during the hearing that he is “extremely concerned when it comes to the pace of retirements that we are seeing of generators that we need for reliability on our system.” He went on to say that “NERC and grid operators have warned about this . . . this is something that we have to keep a careful eye on.”<sup>7</sup> As the Chairman explained, “[FERC is] resource neutral but [FERC is] not reliability neutral.”<sup>8</sup>

In the second hearing,<sup>9</sup> the Chief Executive Officers of the North American Electric Reliability Corporation (“NERC”),<sup>10</sup> the Regional Transmission Organization PJM,<sup>11</sup> and one of America’s largest electric cooperatives<sup>12</sup> also warned about increasing risks to the stability of the electric grids in the United States. When asked if they agreed with Commissioner Danly and Commissioner Christie’s warning that the United States is heading for a reliability crisis, *each said “I do.”* These witnesses expressed the critical, consistent concern that the premature retirement of dispatchable generation is frequently driven by government actions, including rulemakings from the EPA. The Proposed Clean Power Plan 2.0<sup>13</sup> appears to pose a significant threat to the remaining dispatchable fleet when the nation can afford it least. *All three witnesses* also agreed that FERC and NERC should have input on rulemakings that may impact electric reliability.

When developing the original Clean Power Plan finalized in 2015,<sup>14</sup> the Obama administration itself stated that “comments from state, regional and federal reliability entities, power companies and others, as well as consultation with the Department of Energy (DOE) and Federal Energy Regulatory Commission (FERC), helped inform a number of changes made in [the] final rule to

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<sup>4</sup> Full Committee Hearing to Conduct Oversight of FERC, May 4, 2023.

<sup>5</sup> Hearing Testimony from FERC Leadership including: 1. [The Honorable Willie L. Phillips, Chairman](#), 2. [The Honorable James Danly, Commissioner](#), 3. [The Honorable Allison Clements, Commissioner](#), 4. [The Honorable Mark C. Christie, Commissioner](#).

<sup>6</sup> *Id.*

<sup>7</sup> Full Committee Hearing to Conduct Oversight of FERC, May 4, 2023.

<sup>8</sup> *Id.*

<sup>9</sup> Full Committee Hearing to Examine the Reliability and Resiliency of Electric Services in the U.S. in Light of Recent Reliability Assessments and Alerts, June 1, 2023.

<sup>10</sup> Testimony of James B. Robb, President and CEO, NERC. [Robb Testimony](#).

<sup>11</sup> Testimony of Manu Asthana, President and CEO, PJM Interconnection. [Asthana Testimony](#).

<sup>12</sup> Testimony of David J. Tudor, Chief Executive Officer, Associated Electric Cooperative Inc., [Tudor Testimony](#).

<sup>13</sup> The Clean Power Plan 2.0 Proposed Rule includes five separate proposed actions. *See* 88 Fed. Reg. 33240 (May 23, 2023).

<sup>14</sup> Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64874 (Oct. 23, 2015), <https://www.govinfo.gov/content/pkg/FR-2015-10-23/pdf/2015-22842.pdf> (hereinafter “Clean Power Plan”).

address reliability”<sup>15</sup> At that time, EPA acknowledged that its consultations with FERC were “particularly important in shaping some provisions in these final guidelines.”<sup>16</sup>

In 2014 and 2015, the Commission “held four technical conferences to discuss implications of compliance approaches to the rule for electric reliability.”<sup>17</sup> These included “one national and three regional technical conferences on the proposed rule in which the EPA participated and at which the issue of reliability was raised by numerous participants.”<sup>18</sup> All conferences were attended both by EPA leadership and staff, with “EPA leadership [speaking] at all of them.”<sup>19</sup>

The already-strong pressure for premature retirements of electric generating units coupled with the rising risks to electric reliability require you to convene representatives of entities subject to your jurisdiction and other interested parties in order to develop a record on the potential impact of the Clean Power Plan 2.0. Without such a record, FERC’s consultations with EPA are likely to be ineffective. EPA clearly lacks the expertise to project accurately the impact of its rulemaking on electric reliability without deeply informed and engaged participation from FERC and those subject to its jurisdiction that are charged with the obligation to generate and deliver electricity in order to meet continuous demand for electric service.

We ask that the Commission hold a series of technical conferences to analyze the impact of the Proposed Clean Power Plan 2.0 on electric reliability. Additionally, we request that any analysis or documents FERC and NERC provide to the EPA on the impact to electric reliability be shared with the Senate Committee on Energy and Natural Resources and the Senate Committee on Environment and Public Works.

Sincerely,



John Barrasso, M.D.  
Ranking Member  
Committee on Energy and Natural Resources



Shelley Moore Capito  
Ranking Member  
Committee on Environment and  
Public Works

CC: The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency

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<sup>15</sup> *Id.* at 64874.

<sup>16</sup> *Id.* at 64672-64673.

<sup>17</sup> *Id.* at 64707. Each of the four technical conferences were entitled “Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure; Notice of Technical Conferences.” These four conferences included: 1. [National Overview, 79 Fed. Reg. 77001-77002 \(Dec. 23, 2014\)](#), 2. [Western Region, 80 Fed. Reg. 6073 \(Feb. 4, 2015\)](#), 3. [Eastern Region, 80 Fed. Reg. 9715 \(Feb. 24, 2015\)](#), and 4. [Central Region, 80 Fed. Reg. 12472 \(Mar. 9, 2015\)](#).

<sup>18</sup> [80 Fed. Reg.](#) at 64874.

<sup>19</sup> *Id.* at 64707.