

Public Service Commission of West Virginia

Delaware Public Service Commission

October 4, 2023

Honorable Michael S. Regan, Administrator
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Dear Administrator Regan:

Regarding the Environmental Protection Agency (EPA) latest proposed rule impacting baseload, dispatchable, fossil-fuel-fired power plants, EPA-HQ-OAR-2023-0072¹, the signatory Commissions² herein request the EPA to, at a minimum, adopt the recommendations of the Joint ISOs/RTOs³, and further recommend the EPA to work with the Federal Energy Regulatory Commission (FERC) to consider reliability effects of this EPA rule in combination with other recent environmental regulations.

Many reports continue to echo a growing concern about reduced reliability and resilience of our electricity supplies as dispatchable (mostly fossil-fuel-fired) resources retire and are being replaced mostly by intermittent, non-dispatchable resources. The North American Electric Reliability Corporation (NERC), for example, has identified such risks in its recent reliability assessments. PJM Interconnection expressed concerns about reliability risks due to an accelerated level of retirements of baseload steam-driven generation plants and increased reliance on intermittent resources in a recent report⁴.

¹ "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."

<https://www.federalregister.gov/documents/2023/05/23/2023-10141/new-source-performance-standards-for-greenhouse-gas-emissions-from-new-modified-and-reconstructed>

² Public Service Commission of West Virginia, and Delaware Public Service Commission.

³ https://downloads.regulations.gov/EPA-HQ-OAR-2023-0072-0673/attachment_1.pdf

⁴ "*Energy Transition in PJM: Resource Retirements Replacements and Risks*. Feb 24, 2023

With regard to the various existing EPA rules or proposed rules impacting electricity reliability, a group styled as “Joint ISOs/RTOs” comprised of the Electric Reliability Council of Texas (ERCOT), Midcontinent Independent System Operator (MISO), PJM Interconnection (PJM), and the Southwest Power Pool (SWPP), filed comments with the EPA (cited at footnote 3) in its latest proposed rule impacting baseload, dispatchable, fossil-fuel-fired power plants, EPA-HQ-OAR-2023-0072.

The Joint ISOs/RTOs noted that they are:

responsible for maintaining the reliability of the bulk power system that provides electric service to over 154 million Americans. The geographic reach of the Joint ISOs/RTOs is broad, encompassing an area of approximately 2 million square miles, in all or parts of 30 states and the District of Columbia.

In its filing, this group of RTOs/ISOs made strong arguments that the EPA was jeopardizing the reliability of the electric systems within their footprints, serving nearly one-half of the United States. They warned:

The Joint ISOs/RTOs are concerned that the substance of the Proposed Rule as presently configured, as well as its timing, have the potential to materially and adversely impact electric reliability. Moreover, the Proposed Rule, when combined with other EPA rules and other policy actions, could well exacerbate the disturbing trend and growing risk wherein the pace of retirements of generation with attributes needed to ensure grid reliability is rapidly exceeding the commercialization of new resources capable of providing those reliability attributes.

It would be risky to disregard the reliability warnings of the institutions that have been handed the responsibility for managing power supply and transmission of our electricity, which is an economic necessity for our country and a necessity of life for our citizens.

Many individual state utility commissions have similarly expressed concern regarding the need for baseload, always-available, electricity generation or storage resources. State commissions also have a responsibility to assure that electricity supply planning places reliability front and center in the resource planning of the load serving entities in our respective jurisdictions. When the national and regional planners warn that EPA rules could undermine reliability, it is our responsibility to urge EPA to adopt rules that do not increase the risk of reliability problems in order to protect our economies and citizens.

We are not advocating against intermittent resources. They can provide valuable energy into the power grid on an intermittent basis when the sun is shining, and the wind is blowing. However, these resources cannot be expected to provide constant and consistent voltage and frequency even when they are generating and online. Batteries or other energy storage devices may be a backup source, frequency provider, or even base-load provider in the future, but that scenario may be very far into the future and is not likely to occur within the short timelines of EPA rules, which will certainly lead to the premature retirement of the resources that can provide backup, frequency control and baseload power when needed. Until storage is at a more mature stage of development, the potential loss of a substantial level of dispatchable thermal resources could threaten grid reliability.

The EPA has taken major steps in a very short period of time that negatively impact fossil-fuel-fired electricity resources:

- Good Neighbor Rule (Finalized March 2023);
- “New National Emission Standards for Coal- and Oil-Fired Electric Utility Steam Generating Units (Proposed April 2023);
- Proposed Supplemental Effluent Limitations Guidelines and Standards for Steam Electric Power Plants; and
- 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 May 2023).

Unless modified, these regulations may force the premature retirement of always-available dispatchable resources. We are not aware of any comprehensive and thorough analysis by EPA of the stacked reliability consequences of these rules based on NERC's definition of reliability which encompasses both resource adequacy and operating reliability. Reliability is not dependent solely on installed generation capacity. Intermittent generating capacity that is double or triple the megawatt load requirements on the system is not going to provide necessary reliability services such as voltage control, frequency support, and always-available backup reserves.

As state regulatory commissions, we have listened to, and will act upon, the warnings of the ISOs, RTOs and NERC. They are telling us that the grid cannot be operated reliably without essential reliability services. The Federal Government, through EPA, FERC and DOE should likewise place reliability of the electricity supply foremost in their planning and regulatory agendas.

We respectfully urge EPA to, at a minimum, adopt the recommendations of the Joint ISOs/RTOs. EPA should optimally join with other federal agencies, the RTOs and ISOs, and the electricity generators and load-serving entities to conduct reliability analyses based on NERC's definition prior to any of the rules listed above being implemented. Moreover, a memo of understanding with DOE that the EPA will consult with DOE and consider near-term reliability concerns for waivers of parts of its rules after they go into effect may be insufficient to preserve necessary and sufficient dispatchable generation resources. Once the ball is placed in motion for retirement of these units it is a downhill path to retirements that cannot be easily, or quickly, reversed.

In the meantime, we are also asking the Federal Energy Regulatory Commission to consider reliability effects of the EPA rules, particularly when it is being told by the organizations that were championed by the FERC, the ISOs and RTOs, that the EPA is moving too far and too fast on rules that will force the premature retirement of the resources that are needed for reliability. We are pleased that the FERC has scheduled a technical conference for November 9 to assess the impact of the proposed Carbon Rule on grid reliability. The combined impact of these rules must be considered rather than the isolated and non-comprehensive analysis of reliability given by the EPA to date.

Thank you for what we hope will be your renewed and expanded attention to electricity reliability, which is a critical national security, economic and health and safety issue.

Sincerely,



Charlotte R. Lane, Chairman
Public Service Commission
of West Virginia
201 Brooks Street
Charleston, WV 25301
(304) 340-0300



Dallas Winslow, Chairman
Delaware Public Service Commission
861 Silver Lake Blvd.
Suite 100
Dover, DE 19901
(302) 736-7500

CC FERC, DOE, WV Senators and House Members.