

December 20, 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:

We appreciate that your 2023 Annual Reliability Technical Conference (“Technical Conference”)¹ included testimony concerning the potential impact on electric reliability of the Environmental Protection Agency’s (“EPA”) proposed rule to regulate emissions of greenhouse gases from fossil-fueled power plants (“Proposed Clean Power Plan 2.0” or “EPA’s proposed rule”).² As we have noted in earlier correspondence, it is necessary for the Federal Energy Regulatory Commission (“FERC” or “the Commission”) to develop and formally submit to EPA and for EPA itself to have an adequate record of the potential impact of Proposed Clean Power Plan 2.0 on electric reliability. Accordingly, the Commission must do more than convene a single panel with EPA during a single Technical Conference.

It is a positive sign that the Commission issued “a notice inviting post-technical conference comments addressing the topics and questions that accompanied the agenda.” Also, in a letter dated December 12, 2023, Mr. Ronan Gulstone, Chairman Phillips’s Chief of Staff, has called EPA’s attention to the record of FERC Docket No. AD-23-9-000.³ Shortly after the Technical Conference on November 15, EPA issued a supplemental notice of proposed rulemaking that “specifically requests public comment on reliability needs that may arise during implementation of any final

¹ Federal Energy Regulatory Commission, *2023 Annual Reliability Technical Conference*, November 9, 2023, <https://www.ferc.gov/news-events/events/2023-annual-reliability-technical-conference-11092023>.

² 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).

³ Chairman Phillips, Letter in Response to Senators Barrasso and Capito Letter of November 2, 2023, (December 6, 2023) at 8.

rule.”⁴ It is unfortunate that EPA did not seek comment on how EPA’s proposed rule could be modified to prevent negative consequences for electric reliability in the first place.

The record developed at the Technical Conference, and the actions taken by the Commission and by EPA after the Technical Conference, clearly show that a majority of Commissioners agreed (and Mr. Joseph Goffman, Principal Deputy Assistant Administrator of EPA’s Office of Air and Radiation acknowledged) that more work is necessary to determine how EPA’s proposed rule could impair electric reliability.

At the Technical Conference, Commissioner Clements asked Mr. Goffman what the Commission could do to assist EPA. In response, Mr. Goffman testified on behalf of EPA as follows.

“I certainly don't think we have quite the expertise that you would hope we have to tell you specifically what quote ‘FERC should be doing.’ The most important thing from EPA’s perspective and given our mutual mission here is answer the phone when we call with the next round of questions that we’re going to have. Again, as you know, I kind of see us between now and final as ... **going through the circuit several different more times,** looking at our record, looking at questions that commenters raised. Going to the RTO’s, the ISO’s, the utilities the balancing authorities and then coming back to [FERC] and [FERC] staff to get your insights and feedback in terms of helping us interpret what we’re hearing and how we can then translate that into the provisions of the final rule.”⁵

On the basis of Mr. Goffman’s testimony – and thus by its own admission – EPA does not have the expertise to determine the impact of its proposed rule on electric reliability. The Agency is also unable or unwilling to articulate how it or FERC could improve Proposed Clean Power Plan 2.0 to ensure that the final rule does not threaten reliability. Accordingly, the Commission itself must take the lead to protect reliability in the context of EPA’s development of the final rule. Chairman Phillips said, and Mr. Goffman agreed, “[EPA is] having this discussion [with] ongoing engagement and [EPA is] open to hearing feedback and implementing that in the final rule.”⁶ The value of the inter-agency engagement to which Mr. Goffman referred must be measured by the text of the final rule and its effects. To date, the limited engagement between EPA and FERC on electric reliability has been inadequate.

At the Technical Conference, Commissioners identified the pace of retirements driven by Clean Power Plan 2.0 as a critical issue that EPA must address. Commissioner Christie asked Mr. Goffman if the EPA had analyzed how Clean Power Plan 2.0 would impact financing for traditional resources. Based on Mr. Goffman’s answer, Commissioner Christie concluded, and we agree, “EPA has not performed any serious and credible analysis of the essential question of how Electric Generating Units (“EGUs”) that will be affected by Clean Power Plan Rule 2.0 will be

⁴ Chairman Phillips, Letter in Response to Senators Barrasso and Capito Letter of November 2, 2023, (December 6, 2023) at 8.

⁵ Joseph Goffman, “Afternoon Panel 1, 2023 Annual Reliability Technical Conference” Federal Energy Regulatory Commission, November 9, 2023, <https://www.youtube.com/watch?v=GvRxlj10Z1Q&t=2732s> at 54:20.

⁶ Chairman Phillips, “Afternoon Panel 1, 2023 Annual Reliability Technical Conference” Federal Energy Regulatory Commission, November 9, 2023, <https://www.youtube.com/watch?v=GvRxlj10Z1Q&t=2732s> at 30:59.

able to obtain financing for the substantial costs of compliance.”⁷ It is unacceptable that EPA has “not done much if any serious, in-depth analysis” considering that “timelines for compliance are utterly irrelevant if the affected EGU cannot obtain financing for the compliance costs.”⁸

In response to a question from Commissioner Danly concerning the impact of Clean Power Plan 2.0 on electricity markets broadly and the currently expected pace of retirements in the organized markets, Mr. Goffman told the Commission that he would like to “actually follow up on this discussion” because “[Commissioner Danly] laid out a lot of issues that I think [EPA will] have to address in terms how we account for potential retirements ... that are either occurring or are projected.”⁹ Commissioner Danly and “a plurality of commenters have raised these issues,” leaving EPA with what Mr. Goffman referred to as “homework” to be undertaken as Clean Power Plan 2.0 remains “very much a work in progress.”¹⁰

At this writing, it is unclear how EPA will treat Mr. Gulstone’s letter calling attention to the record FERC has developed in Docket No. AD23-9-000. Accordingly, we renew our request that the Commission formally file the record in Docket No. AD23-9-000 in EPA Docket No. EPA-HQ-OAR-2023-0072-0007.¹¹ This filing must include all comments to the Commission, and the 2023 Long Term Reliability Assessment issued by the North American Electric Reliability Corporation (“NERC”) on December 13, 2023.¹² Only then will EPA even begin to have an adequate record on reliability issues relating to Proposed Clean Power Plan 2.0. Mr. Goffman testified that EPA’s effort on the proposed rule is “in the fifth inning.”¹³ He conceded that EPA’s proposed rule is still nowhere near ready for finalization. Thus, the Technical Conference must represent the beginning, and not the end, of engagement between the Commission and EPA on the subject of electric reliability. Mr. Goffman acknowledged that EPA would benefit from “the record of this proceeding today to be shipped to [EPA].”¹⁴

As Commissioner Danly said at the end of his statements, we must “hope that [EPA and FERC are] going to keep talking.”¹⁵ We share Commissioner Danly’s hope that EPA will return to the Commission again to discuss how its Proposed Clean Power Plan 2.0 can avoid harming electric reliability. We urge you to remain engaged with EPA and to keep us apprised of progress on these

⁷ Comm. Christie, Letter in Response to Senators Barrasso and Capito Letter of November 2, 2023, (November 21, 2023) at 3.

⁸ Comm. Christie, Letter in Response to Senators Barrasso and Capito Letter of November 2, 2023, (November 21, 2023) at 3.

⁹ Joseph Goffman, “*Afternoon Panel 1, 2023 Annual Reliability Technical Conference*” Federal Energy Regulatory Commission, November 9, 2023, <https://www.youtube.com/watch?v=GvRxljI0Z1Q&t=2732s> at 45:57-47:31.

¹⁰ Joseph Goffman, “*Afternoon Panel 1, 2023 Annual Reliability Technical Conference*” Federal Energy Regulatory Commission, November 9, 2023, <https://www.youtube.com/watch?v=GvRxljI0Z1Q&t=2732s> at 45:57-47:31.

¹¹ Chairman Phillips, Letter in Response to Senators Barrasso and Capito Letter of November 2, 2023, (December 6, 2023) at 7.

¹² North American Electric Reliability Corporation, *2023 Long-Term Reliability Assessment*, (December 13, 2023). https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2023.pdf

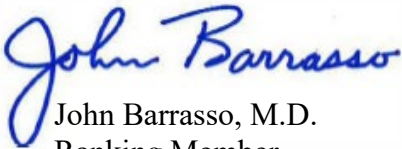
¹³ Joseph Goffman, “*Afternoon Panel 1, 2023 Annual Reliability Technical Conference*” Federal Energy Regulatory Commission, November 9, 2023, <https://www.youtube.com/watch?v=GvRxljI0Z1Q&t=2732s> at 59:09.

¹⁴ Comm. Christie, “*Afternoon Panel 1, 2023 Annual Reliability Technical Conference*” Federal Energy Regulatory Commission, November 9, 2023, <https://www.youtube.com/watch?v=GvRxljI0Z1Q&t=2732s> at 58:57.

¹⁵ Comm. Danly, “*Afternoon Panel 1, 2023 Annual Reliability Technical Conference*” Federal Energy Regulatory Commission, November 9, 2023, <https://www.youtube.com/watch?v=GvRxljI0Z1Q&t=2732s> at 48:07.

critically important matters. As we pointed out in our letter of November 2, if Commissioners and FERC staff do not bring to bear your expertise and fact-based analysis to dissuade the EPA from continuing on its current course, you will bear at least partial responsibility for any blackouts and brownouts that occur as result of electric resource shortages that would be attributable to compliance with a final rule resembling the Proposed Clean Power Plan 2.0.

Sincerely,



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



Shelly Moore Capito
Ranking Member
Committee on Environment and Public Works

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

Cc: Mr. James Robb, Chief Executive Officer, North American Electric Reliability Corporation