



December 20, 2023

Mr. Christian Fellner  
U.S. Environmental Protection Agency  
EPA Docket Center, Docket ID No. EPA-HQ-OAR-2023-0072  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

*Submitted via Regulations.gov*

RE: Docket ID No. EPA-HQ-OAR-2023-0072

Dear Mr. Fellner:

I appreciate this opportunity to provide comments on the supplemental notice of proposed rulemaking for the 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.”<sup>1</sup>

The Environmental Protection Agency (EPA) has requested comments on “mechanisms” to address potential reliability issues. This is in part due to feedback the agency has received through the comment process and the Small Business Advocacy Review panel process. The term “mechanisms” is not defined but appears to include such things as exceptions, flexibilities, and extensions that would be incorporated into any final rule.

The EPA’s failure to adequately consider reliability issues is not something that can be addressed through “mechanisms.” The agency has once again, as it did with the Clean Power Plan, tried to act like the nation’s grid manager despite not having authority to do so. The agency is also not an electricity expert, something that the EPA has acknowledged in the past and the Supreme Court pointed out in *West Virginia v. EPA* when it struck down the Clean Power Plan.<sup>2</sup>

---

<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,” Environmental Protection Agency, Supplemental Notice of Proposed Rulemaking, 88 Fed. Reg. 80682, November 20, 2023, <https://www.federalregister.gov/documents/2023/11/20/2023-25580/new-source-performance-standards-for-greenhouse-gas-emissions-from-new-modified-and-reconstructed> (accessed December 19, 2023).

<sup>2</sup> *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), 2612-13, <https://www.oyez.org/cases/2021/20-1530> (accessed December 19, 2023).

This lack of expertise is compelling evidence, in and of itself, demonstrating that Congress never envisioned the EPA would use the Clean Air Act to change how electricity is generated in the United States. If there were any question regarding whether the agency has such expertise, then one need only look at the proposed rule’s failure to properly address reliability issues and this supplemental notice that appears in part to be an effort to somehow save the rule from this failure.

The following are just a few of the concerns expressed by actual electricity grid experts:

Electric Reliability Council of Texas, Midcontinent Independent System Operator, PJM Interconnection and Southwest Power Pool filed joint comments arguing:

[W]e believe that the Proposed Rule’s Best System of Emissions Reduction (BSER) determination overstates the commercial viability of CCS and hydrogen co-firing today and ignores the cost and practicalities of developing new supporting infrastructure within the time frames projected. Without firm proof of the commercial and operational viability of these technologies, proceeding with these requirements could place the reliability of the electric grid in jeopardy. In short, hope is not an acceptable strategy.<sup>3</sup>

Importantly, they point out that the rule would have near-term problems as well:

These concerns are not limited to the future years in which the Proposed Rule would require these new technologies to be employed. The Joint ISOs/RTOs are equally concerned that the Rule (and the cumulative effect of all of the recent electric industry-related EPA actions and rulemakings) could have a chilling effect in the near-term on the investment needed to maintain dispatchable generating units until these new technologies develop.<sup>4</sup>

Jim Matheson, CEO of the National Rural Electric Cooperative Association (NRECA), expressed the following in response to the North American Electric Reliability Corporation’s (NERC) 2023 Long-Term Reliability Assessment:

NERC’s latest assessment paints another grim picture of our nation’s energy future as demand for electricity soars and the supply of always-available generation declines,.... Nine states saw rolling blackouts last December as the demand for electricity exceeded available supply. And proposals like the EPA’s power plant rule will greatly compound

---

<sup>3</sup> Joint Comments of Electric Reliability Council of Texas, Inc. (“ERCOT”), Midcontinent Independent System Operator, Inc. (“MISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”) to the Environmental Protection Agency regarding “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” at 2, <https://www.pjm.com/-/media/documents/other-fed-state/20230808-comments-of-joint-isos-rtos-docket-epa-hq-oar-2023-0072.ashx> (accessed December 19, 2023).

<sup>4</sup> Ibid.

the problem. Absent a major shift in state and federal energy policy, this is the reality we will face for years to come.<sup>5</sup>

Asserting that the EPA is not an electricity grid expert agency is not a criticism. Congress never intended it to be, and any expectation that it knows grid issues would be unfair. Yet what is more unfair, as well as damaging, is the agency not acting accordingly.

Electricity experts are already concerned with grid reliability issues, and now the EPA has proposed a rule that could have devastating effects on the grid. When talking about the “grid,” it can sound technical and a bit clinical. Therefore, to put this in practical terms, the EPA’s proposed rule would make it more likely that Americans will experience blackouts and suffer the severe health and economic harm that would result. Electricity prices will rise, affecting the entire economy, from the hospitals saving lives to the schools educating our nation’s children. On top of this, the higher prices will have a disproportionate impact on the poor.

--

I strongly urge the EPA to withdraw its proposed power plant rule. Mechanisms, as discussed in the supplemental notice, are not going to fix a rule that is unauthorized and a major threat to meeting the basic need of providing electricity to Americans.<sup>6</sup>

Sincerely,

Daren Bakst  
Director, Center for Energy and Environment, and Senior Fellow  
Competitive Enterprise Institute  
[daren.bakst@cei.org](mailto:daren.bakst@cei.org)

---

<sup>5</sup> “NERC Long-Term Reliability Assessment Paints Grim Picture of America’s Energy Future,” NRECA press release, December 13, 2023, <https://www.electric.coop/nerc-long-term-reliability-assessment-paints-grim-picture-of-americas-energy-future> (accessed December 19, 2023). *See also* “2023 Long-Term Reliability Assessment,” North American Electricity Reliability Corporation, December 2023, [https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC\\_LTRA\\_2023.pdf](https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2023.pdf) (accessed December 19, 2023).

<sup>6</sup> There are many other problems with the proposed rule in addition to the lack of statutory authority and the EPA’s failure to properly consider reliability. This includes the agency’s failure to properly consider costs. To see additional concerns regarding the proposed rule, see e.g. Comment of the Competitive Enterprise Institute to the Environmental Protection Agency regarding “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.regulations.gov/comment/EPA-HQ-OAR-2023-0072-0706> (accessed December 19, 2023).