



FEDERAL ENERGY REGULATORY COMMISSION

August 8, 2023

Hon. Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

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

Dear Administrator Regan:

I submit this comment to provide a necessary correction, and to make a request in this docket concerning the Environmental Protection Agency's (EPA) proposed rulemaking on *New Source Performance Standards for Greenhouse Gas Emissions*.¹

In the Proposed Rule, the EPA states that it "evaluated the reliability implications of the proposal . . . and consulted with the [Department of Energy] and the *Federal Energy Regulatory Commission (FERC)* in the development of these proposals."² The EPA did not consult *the Commission*. I understand that consultation with Commission staff on limited subjects did indeed occur. I also understand that, in the course of that consultation, Commission staff did not provide either modeling or a substantive review of the Proposed Rule's potential reliability effects. Such limited consultation is not unusual. Communication between FERC and other federal agencies typically occurs at the staff level, subject to the supervision of the Chairman.³ The opinion of Commission staff, however, does not and cannot constitute the opinion of the Commission. The Commission is a multimember body requiring a quorum of three voting commissioners to act⁴ and only speaks

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; & Repeal of the Affordable Clean Energy Rule*, 88 Fed. Reg. 33,240 (proposed May 23, 2023) (Proposed Rule).

² *Id.* at 33,246-247 (emphasis added).

³ See 42 U.S.C. § 7171(c) ("The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including . . . the supervision of personnel employed by or assigned to the Commission. . .").

⁴ See *id.* § 7171(b)(1) ("The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate."); *id.* § 7171(e) ("Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present.").



through its orders.⁵ I was not asked what I thought of Proposed Rule's effects on electric reliability, and I am not aware of my fellow commissioners having had their feedback solicited.

FERC is the agency Congress has charged with overseeing the promulgation of the mandatory standards that ensure the reliable operation of the bulk-power system.⁶ The Commission also has jurisdiction over the tariffs for wholesale power sales, among which are the tariffs that govern the capacity markets.⁷ Those markets play a vital role in providing the economic incentives necessary to ensure resource adequacy in many of the organized markets. In a word, FERC is the agency with the jurisdiction and knowledge necessary to ensure that the bulk electric system functions and that it has sufficient generation to meet demand. The bulk electric system is complicated—even the smallest addition or loss of generation or transmission can have a profound effect on the system's stability. Every change to the bulk electric system requires an engineering study, a lengthy and complex process. The EPA is contemplating policies that promise to alter the makeup of the bulk electric system drastically and on an abbreviated timeline. When proposing a rule with such profound consequences, responsible decision-making requires hard data. Absent input from the Commission, based on detailed analyses by Commission staff, it is nearly impossible

⁵ See *Californians for Renewable Energy v. Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,213, at P 13 (2021) (citations omitted).

⁶ See 16 U.S.C. § 824o(b)(1) (“The Commission shall have jurisdiction, within the United States, over the [Electric Reliability Organization, *i.e.*, the North American Electric Reliability Corporation (NERC)] certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 824(f) of this title, for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.”). NERC Reliability Standards apply to the bulk electric system, as defined by NERC and approved by the Commission, that affects bulk-power system reliability.

⁷ See *id.* § 824(b)(1) (“The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.”); *id.* § 824d(a) (“All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.”).



to imagine that the EPA could be in a position to reach an informed conclusion regarding the reliability consequences of its Proposed Rule.

Which brings me to my request. On August 3, 2023, the Secretary of the Commission issued a notice announcing the Commission's annual Reliability Technical Conference for Thursday, November 9, 2023.⁸ The Notice states that "[t]he purpose of this conference is to discuss policy issues related to the reliability and security of the Bulk-Power System" and that "[t]he conference will also discuss the impact of the Environmental Protection Agency's proposed rule under section 111 of the Clean Air Act on electric reliability."⁹ The Commission is convening this technical conference, and discussing this specific subject matter, because we must consider the substantial consequences of the EPA's Proposed Rule. While the Proposed Rule could, by itself, significantly impair reliability, the Commission must also consider the Proposed Rule amidst the numerous other public policies that increasingly jeopardize the reliable operation of the bulk electric system.¹⁰

Given FERC's unmatched experience in overseeing the development of mandatory reliability standards, and its role in promoting resource adequacy in the organized markets, I urge the EPA to extend the comment period in this docket in order to afford FERC the opportunity to lodge the record of its upcoming technical conference, including the comments FERC receives from the public, in the administrative record for this proceeding. The conference's testimony and written submissions will provide necessary information, received from a wide variety of sources, regarding the likely effect of the Proposed Rule on bulk electric system reliability. This would provide both the EPA and the public an opportunity to consider the Proposed Rule with a fuller understanding of its probable consequences. Until the record of FERC's technical conference is submitted in the docket, the EPA will lack the record evidence necessary to make an informed decision.

Very respectfully,

A large, handwritten signature in black ink, which appears to read 'James P. Danly', is written over the typed name and title.

James P. Danly
Commissioner
Federal Energy Regulatory Commission

⁸ *2023 Annual Reliability Technical Conference*, FERC, Docket No. AD23-9-000 (Aug. 3, 2023), <https://www.ferc.gov/news-events/events/2023-annual-reliability-technical-conference-11092023> (Notice).

⁹ *Id.* (citing EPA's Proposed Rule).

¹⁰ See, e.g., *Fed. "Good Neighbor Plan" for the 2015 Ozone Nat'l Ambient Air Quality Standards*, 88 Fed. Reg. 36,654 (June 5, 2023).