



FEDERAL ENERGY REGULATORY COMMISSION

December 20, 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:

In my August 8, 2023, letter to you,¹ I explained my concern that the Environmental Protection Agency had not consulted the Federal Energy Regulatory Commission (FERC or Commission) about the implications of the EPA's proposed *New Source Performance Standards*² for the reliability of the bulk electric system. In a letter to Ranking Members Barrasso and Capito, I explained additional concerns that I have that, by its own terms, the Proposed Rule lacks a comprehensive analysis of reliability.³ Though the EPA has taken several positive steps, it has not remedied this fundamental shortcoming.

On November 9, the Commission held its annual reliability technical conference. Though Mr. Joseph Goffman, the principal deputy assistant administrator of the Office of Air and Radiation, was only afforded an hour to discuss the intricacies of the proposed rule with the Commission, I was heartened by Mr. Goffman's enthusiasm to learn more about the complex interactions between the EPA's proposed regulation and issues within FERC's jurisdiction, such as the operation of the RTOs/ISOs that operate much of the country's electric system. I was further heartened when I saw

¹ Comment of Commissioner James P. Danly on the EPA's proposed New Source Performance Standards for Greenhouse Gas Emissions, at 2 (Aug. 8, 2023), <https://www.ferc.gov/news-events/news/comment-commissioner-james-p-danly-epas-proposed-new-source-performance-standards>.

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

³ Commissioner Danly's November 8, 2023 Initial Response to November 2, 2023 Letter of Ranking Member Barrasso and Ranking Member Capito, <https://www.ferc.gov/news-events/news/commissioner-danlys-initial-response-ranking-member-barrasso-and-ranking-member> (November 8 Letter).



the issuance of the supplemental notice of proposed rulemaking, seeking comment on “reliability mechanisms.”⁴ This shows the EPA’s recognition of its obligation ensure that its rules are based upon the review of a complete record.

I remain concerned, however, that the EPA Supplemental Notice misses the mark with respect to the additional information that it solicits. The EPA is seeking comment on “reliability mechanisms,” that is, steps that balancing authorities and others can take when reliability challenges *arise*.⁵ It does not seek comment on the impact on reliability that the EPA’s rule could *cause*. Comments on such mechanisms will not remedy a failure to conduct a comprehensive reliability analysis on the record.

Part of the problem with EPA’s inquiry into the reliability consequences of its rulemaking comes down to the EPA’s muddling of two separate, but related concepts, perhaps due to FERC’s somewhat late inclusion in EPA’s deliberations.⁶ Reliability, put simply, is the bulk power system’s ability to operate continuously within ordinary parameters without interruption. Resource adequacy is something different. It is the system’s ability to meet electric demand with sufficient generation to satisfy load requirements at all times. It is possible to have a system that is resource adequate but which is unreliable. Imagine a scenario in which you have more generation than necessary to meet load requirements, but because of continuous faults in the transmission lines, the power cannot get to where it is needed. Conversely, you can have a reliable system that is not resource adequate. Think of a system in which all mandatory reliability standards are fully implemented and the transmission system is capable of transmitting available power, but because the system has failed to build sufficient generation to meet peak demand, insufficient power is available regardless of transmission capacity.

As I discussed with Mr. Goffman during the course of the 8 minutes I had during his appearance at the annual reliability technical conference: EPA appears not to have considered a critical aspect of the proposed rule, one that sounds in *both* reliability *and* resource adequacy: the effects of the proposed rule on FERC-jurisdictional markets, the ISOs and RTOs, which are the mechanisms by which power is procured for nearly two thirds of Americans.

In the old model of utility regulation, as was alluded to in my colloquy with Mr. Goffman during the technical conference, vertically integrated utilities, under the watchful eye of their state regulatory commissions, ensured resource adequacy and reliability through the development of

⁴ Environmental Protection Agency, Supplemental Notice of Proposed Rulemaking, 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. 80682, 80683 (Nov. 20, 2023) (EPA Supplemental Notice), <https://www.regulations.gov/document/EPA-HQ-OAR-2023-0072-8106>.

⁵ “The EPA is soliciting detailed comment on whether the Agency should include a specific mechanism or mechanisms to address grid reliability needs that may arise during implementation of its final rules....” *Id.* at 80684.

⁶ This is the same confusion that the anonymous commenter on EPA Resource Adequacy Technical Support Document during the interagency process that I reference in my November 8 Letter. *See* November 8 Letter at 2.



integrated resource plans developed by the utilities and approved by their state commissions. The utilities had every incentive to develop plans that would ensure both reliability and resource adequacy because they operated under a legal obligation to serve their customers at all times and were liable for failure. Times have changed. Now, the majority of Americans are served by distributors who procure electric power from one or another of FERC's wholesale markets. Generally speaking,⁷ in the regions that are served by the markets, the generators participating in those markets do not have the same duty to serve. The markets were designed to obtain the requisite quantity of generation through procurement auctions with price signals and incentives designed to do the work that the utilities' planning processes had once done. Indeed, one might say that this was in part the very reason for developing the markets—to take generation choices out of the hands of central planners and let market forces deliver the most efficient power possible.

Because the markets are the *sole means* by which to procure sufficient generation to provide power to millions of Americans, it is simply impossible to arrive at an informed understanding of the consequences of the proposed rule without a searching exploration of the rule's effects on the markets, particularly the consequences the rule will have on price formation, which is the means by which the markets create incentives for needed new entry and the retention of existing, needed generation. Merely declaring the assumption that the markets will ensure "orderly" retirements is insufficient. Reasonable and reasoned predictions as to the final rule's effects on the markets, based on actual market data, are absolutely essential. To finalize the rule absent this analysis will be to push the electric system off a cliff without knowing whether it will hit feathers or asphalt.

Similarly, it cannot be rational or responsible to pin the hopes for a reliable and adequate electric system on establishing "reliability off-ramps." Conducting the market analysis that I describe above is a necessary precondition to determining just how much or how often the reliability off-ramps may have to be relied upon and the degree to which their expected employment will both undermine the purpose of the rule and further skew the prices upon which the markets rely to procure sufficient capacity to meet demand.

⁷ In some of the market regions, such as MISO, utilities remain vertically integrated.



Should EPA find itself unable to conduct this analysis based on the evidence so far adduced in this proceeding, I respectfully submit that it must open yet another comment period, one that specifically solicits comments on the proposed rules effects on markets and price formation, rather than focusing solely on the fixes to a problem which, while implicitly acknowledged, is of unknown scope and consequence. A robust and searching analysis into the proposed rule's effects on the market mechanisms through which power is procured for the majority of Americans is critical to understanding the reliability (and resource adequacy) effects of the rule. To promulgate a final rule in the absence of such analysis would be irresponsible and unreasoned.

Sincerely,

A handwritten signature in black ink that reads "James Danly". The signature is written in a cursive, flowing style.

James P. Danly
Commissioner