

March 8, 2023

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington, DC 20004

RE: Docket No. EPA-HQ-OAR-2021-0668

Dear Administrator Regan:

I am writing to express my strong concerns regarding the upcoming final regulation for the “Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard.” I urge EPA to postpone finalizing this rule until the agency has addressed the warnings from our nation’s electric reliability experts and the significant concerns expressed by state environmental agencies.

This rule, also known as the “Interstate Transport Rule” or “Good Neighbor Rule,” applies primarily to power plants and certain other industrial facilities to reduce nitrogen oxides (NO<sub>x</sub>) that may contribute to ozone in other states. Regional electricity grid operators have warned that the proposed rule threatens electricity affordability and reliability. By EPA’s own analysis, this proposal will drive up West Virginians’ electricity prices. Of even greater concern, PJM Interconnection (PJM), the grid operator serving 64 million customers in West Virginia and 13 other states, commented last summer that the Good Neighbor Rule has the potential to cause “distinct reliability challenges that must be addressed,” including challenges related to insufficient power generation and loss of essential grid attributes and services. PJM offered a series of changes to the rule including adjustments to allow the “emissions allowance bank” to function on a regional basis, creation of a “reliability safety valve,” and more predictable ozone budgeting that the electricity sector can rely on for long-term planning.

Similarly, in a joint public comment, PJM along with three of the largest grid operators responsible for ensuring bulk power system reliability for more than 150 million customers, argued that the proposed rule threatens grid reliability because it lacks a reliability safety valve and raised concerns that the high costs of installing Selective Catalytic Reduction necessary to comply with the rule could lead to premature power plant retirements or reduced plant runtimes. EPA should seize the opportunity to mitigate these reliability concerns, especially since EPA has previously adopted similar suggestions in previous Clean Air Act rules. These recommendations proposed by grid operators are a perfect example of commonsense implementation flexibility

that, in EPA’s own words, “reflect the paramount importance of ensuring electric system reliability,” and should be adopted here.<sup>1</sup>

The threat is not limited to electricity utilities. Other industrial sources targeted in the rule include iron, steel, cement and concrete manufacturers—all critical to infrastructure creation and likely to face technical challenges and costs that will be passed along to consumers to implement the requirements EPA has proposed. Over 20 states have weighed-in raising serious concerns about this rulemaking. However, EPA has not indicated whether it plans to address these concerns in its final rule.

EPA must not rush into such a substantial new regulation. The rule is already procedurally troubling as it appears to supersede the state ozone pollution implementation plans developed by 26 state environmental agencies from around the country. Instead of ignoring the state plans, the warnings from our nation’s electricity reliability experts, and the impacts to the industries behind America’s critical infrastructure, I urge EPA to postpone promulgation of a final rule until these concerns can be addressed. EPA must clearly demonstrate how it is working with states, grid operators, and utilities to ensure electricity reliability and address the dire warnings from elected officials, our nation’s electricity experts, and key manufacturing industries.

I look forward to your prompt response to my continued concerns about the impact of this rule on West Virginia and the nation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Manchin III". The signature is fluid and cursive, with a long horizontal stroke at the end.

JOE MANCHIN III  
U.S. Senator

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<sup>1</sup> Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Final Rule, EPA-HQ-OAR-2013-0602, 80 Fed. Reg. 64,662, 64,877-79 (Oct. 23, 2015) (“Clean Power Plan”).