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December 20, 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-2023-0072

Dear Administrator Regan:

I write to convey my strong concerns regarding the impacts of the New Source Performance Standards and Emission Guidelines proposed under section 111 of the Clean Air Act by the Environmental Protection Agency (EPA).[1] I am deeply concerned with the effects the proposed rule would have on dispatchable power generating units needed for grid reliability and on already overburdened ratepayers and our most vulnerable communities.

Americans count on a diverse mix of energy resources to maintain a reliable and affordable power grid. In 2022, fossil fuels supplied about 60% of total U.S. electricity.[2] In addition, over 80 gigawatts of proposed natural gas generation is waiting to come online.[3] Yet due in significant part to past EPA rulemakings, our generating fleet is already undergoing a disorderly transition that puts Americans at risk.

EPA's latest proposed greenhouse gas rule lacks any provision that would empower regulators or our nation's grid operators to extend the operational life of generators facing premature retirements without imposing the severe costs of the proposed rule on local ratepayers. This is in contrast to past EPA proposals which contained a Reliability Safety Valve.[4] This omission suggests a lack of understanding of the risks associated with potential energy shortfalls.

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[1] U.S. Environmental Protection Agency, "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 FR 80682, *available at* https://www.epa.gov/system/files/documents/2023-05/FRL-8536-02-OAR%20111EGU%20NPRM%2020230504_Admin.pdf

[2] U.S. Energy Information Administration, "What is U.S. electricity generation by energy source?," *available at* https://www.eia.gov/tools/faqs/faq.php?id=427&t=3

[3] Lawrence Berkeley National Laboratory, "Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection," *available at* https://emp.lbl.gov/queues

[4] U.S. Environmental Protection Agency, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 FR 64662, *available at* https://www.govinfo.gov/content/pkg/FR-2015-10-23/pdf/2015-22842.pdf.

The accelerated retirement of even a single unit can pose outsize reliability risks to entire communities and regions and lead to local communities bearing an unfair share of the cost of our energy transition. One example of this risk is that of the Brandon Shores coal-fired power plant in Anne Arundel County, Maryland. The plant owner, Talen Energy announced in April of 2023 that it would retire the plant in June 2025.[5] PJM's reliability analysis found that the retirement would result in over 600 reliability violations, but a private agreement that Talen had reached with the Sierra Club prevented keeping the plant online other than through 90-day emergency orders that the Secretary of Energy may issue.[6] PJM has implored the Sierra Club—so far to no avail— "to allow for Talen to continue to operate Brandon shores" temporarily, warning that "[f]ailure to come to resolution on this issue could result in degraded grid reliability for over 1,000,000 Maryland consumers during peak hours, including the entirety of the city of Baltimore."[7] Meanwhile, FERC has had to approve roughly $800 million in transmission upgrades which will only come online in 2028—three years after the plant goes offline—merely to minimize the window of time during which all of Baltimore will be at risk.[8]

As written, EPA's rule risks making such unjust and disorderly retirements routine. Communities in West Virginia—and across the country—simply cannot afford to spend tens or hundreds of millions of dollars on carbon capture and storage (CCS) or clean hydrogen upgrades for plants that would otherwise retire within several years of new EPA requirements coming into effect. But EPA's proposed rule leaves communities, regulators, and grid operators no real choice. For plants where EPA's carbon capture and clean hydrogen mandates are impractical or unaffordable to meet, not doing so will still saddle ratepayers with steep noncompliance penalties or—as with Brandon Shores—reliability risks and the exorbitant costs of disorderly stopgap grid upgrades. And to the degree that the significant advancements in CCS or clean hydrogen technologies recognized by EPA as the Best System of Emission Reduction (BSER) do not materialize promptly, the situation will only worsen.

EPA's proposed rule could therefore result in a future deficit in compliant generation and an increased risk of power outages. A more practical approach would involve EPA acknowledging and working to fix the roadblocks to widespread deployment of CCS technologies and clean hydrogen at scale, many of which are this administration's own creation. Achieving these objectives would require the development of a comprehensive new infrastructure—this includes numerous Class VI carbon sequestration wells, but to-date EPA has permitted zero Class VI wells under this Administration, despite receiving over 170 applications.[9] It would also require the Administration to ignore calls from advocates to create new restrictions on the 45V hydrogen tax credit that were not included in the Inflation Reduction Act.

Short of addressing these larger concerns, EPA must at a minimum include a reliability safety valve in any future power plant rule. Such a mechanism should facilitate input from reliability

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[5] Letter, *available at* https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20231205-pjm-board-response-to-sierra-club-letter-regarding-pjm-interconnections-role-in-the-maryland-energy-transition.ashx
[6] Ibid.
[7] Ibid.
[8] Federal Energy Regulatory Commission, "Order on cost allocation report and tariff revisions, *available at* https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20231108-3068
[9] U.S. Environmental Protection Agency, "Current Class VI Projects under Review at EPA," *available at* https://www.epa.gov/uic/current-class-vi-projects-under-review-epa.

regulators and grid operators on the impact of new rules and associated retirements on the electric grid. It should also allow for the temporary suspension of new requirements for individual plants which would otherwise retire as a result of the rule and whose retirement would result in violations of federally approved reliability standards or resource adequacy tariffs. Finally, such a mechanism must hold ratepayers harmless while grid and resource planning processes are allowed time to produce adequate and cost-effective solutions.

I appreciate your attention to this matter. It is essential that any EPA power sector rule protects the integrity of our grid in a manner that is responsible, feasible, and cost effective.

Sincerely,

Joe Manchin III
United States Senator