



November 8, 2023

The Honorable Willie L. Phillips
Chairman

The Honorable James Danly
Commissioner

The Honorable Allison Clements
Commissioner

The Honorable Mark C. Christie
Commissioner

Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

RE: Reliability Technical Conference; Docket No. AD23-9-000

Dear Chairman Phillips and Commissioners:

The National Mining Association (NMA) appreciates the opportunity to provide comments on the Federal Energy Regulatory Commission's (FERC) "Reliability Technical Conference" (Docket No. AD23-9-000) scheduled on Nov. 9, 2023. The NMA has a significant interest in FERC's afternoon session focused on the U.S. Environmental Protection Agency's (EPA) recent proposed rule under Clean Air Act (CAA) Section 111 to regulate greenhouse gas emissions from existing coal-fired power plants.¹ Known as the Clean Power Plan 2.0, EPA's proposal is clearly intended to ultimately force the nation to shift almost entirely away from the primary source of energy used to generate electricity today, fossil fuels.

¹ 88 Fed. Reg. 33,240 (May 23, 2023).

While the NMA commends FERC for holding this technical conference and including a discussion on grid reliability impacts that could result from EPA's Clean Power Plan 2.0, devoting only 75 minutes of discussion with selected electricity industry stakeholders and 70 minutes of discussion with a shortlist of regional, state, and local regulatory entities is simply not enough time to thoroughly analyze this critical issue. In 2015, FERC held four technical conferences to analyze EPA's original Clean Power Plan, including one conference in Washington, D.C. and three regional conferences.² Seven years later, the U.S. Supreme Court held that the Clean Power Plan presented an "extraordinary" case of an administrative agency using vague language to wield transformative power that Congress had not clearly granted and admonished EPA for the Clean Power Plan's "generation shifting approach."³

By all accounts, EPA did not meaningfully consult with the nation's electric grid experts and operators before proposing the Clean Power Plan 2.0, allowing the agency to peddle falsehoods that its regulatory agenda will have no impact on the grid. At the same time, warnings over the threat posed by the loss of dispatchable sources of generation – namely fuel-secure coal power – have reached a crescendo over the past few months. Yet, EPA continues to reject these warnings as it moves forward with its damaging regulatory agenda. The power sector is already moving at a break-neck pace in transition toward a lower carbon future, risking reliability of the grid in the process. But the speed of the voluntary transition already underway does not compare to the accelerated transformation EPA's "power plant strategy" mandates by force of law. FERC must step in and hold EPA accountable for its faulty analyses and conclusions.

A more thorough analysis of reliability impacts is required to protect our nation's grid from certain resource adequacy disruptions associated with the rapid loss of dispatchable fuel like coal. As discussed further below, we believe that FERC has missed an important opportunity to focus on the cumulative impacts of EPA's "power plant strategy" in this technical session. The Clean Power Plan 2.0 is just one piece of EPA's strategy. EPA is pursuing a coordinated, multi-media regulatory agenda involving several rulemakings focused on other air pollutants and wastewater discharges, as well as greatly

² See FERC, "Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure; Notice of Technical Conferences," 79 Fed. Reg. 77001 (Dec. 23, 2014) (national overview); 80 Fed. Reg. 6073 (Feb. 4, 2015) (western region); 80 Fed. Reg. 9715 (Feb. 24, 2015) (eastern region); 80 Fed. Reg. 12472 (Mar. 9, 2015) (central region).

³ *West Virginia v. EPA*, 142 S. Ct. 2587 (June 30, 2022).

restricting management of coal combustion residuals (CCR).⁴ The NMA strongly urges FERC to continue to engage with the electric utility industry, their fuel suppliers, and grid experts and conduct a meaningful examination of the cumulative impact of EPA's "power plant strategy." FERC's role and expertise in protecting electric reliability and ensuring sufficient generation is vital, particularly given EPA's plans to finalize the most damaging rules in its strategy early next year.

Statement of Interest

The NMA is the official voice of U.S. mining. Our membership includes approximately 280 companies and organizations involved in every aspect of mining, from producers and equipment manufacturers to service providers. We represent all facets of the domestic mining industry, and the hundreds of thousands of American workers it employs, before Congress, federal agencies, the courts, and the public. The NMA advocates for public policies that will help America fully and responsibly utilize its vast natural resources. Our members work to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security, and economic security, all delivered under world-leading environmental, safety, and labor standards.

In 2022, our member companies represented 74 percent of U.S. coal production in 18 states. Coal produced by NMA members is used by steam electric power plants to produce the affordable and reliable baseload power on which our country depends. EPA's proposed rule would have an unprecedented impact on the coal fleet by forcing widescale premature retirements, which in turn directly impacts the coal supply chain and the

⁴ As part of its plan to remake the power sector, EPA has promulgated or proposed five rulemakings, including the recently finalized Ozone Transport Rule, the recently proposed Mercury Air Toxics Standards residual risk and technology review, the proposed rulemaking to lower the National Ambient Air Quality Standards for particulate matter, the Clean Water Act Effluent Limitations Guidelines proposed revisions, and most recently the Clean Power Plan 2.0. EPA is also continuing to implement the 2015 Coal Combustion Residuals rule and responding to facility requests to continue to operate certain surface impoundments under the Resource Conservation and Recovery Act Part A and Part B programs. EPA's upcoming decisions on state implementation plans for the Regional Haze second planning period will also play an important role. Because all these actions affect the power sector, coal generation, and reliability, the impact of one rule cannot be understood without understanding the impacts of all the others. See *e.g.*, Reuters, "Exclusive: Biden EPA to Tackle Coal Industry Carbon with Rules on Other Pollutants," (July 29, 2022), available at <https://www.reuters.com/world/us/exclusive-biden-epa-tackle-coal-industry-carbon-with-rules-other-pollutants-2022-07-29/> (last visited Nov. 8, 2023) (discussing EPA Administrator Regan's characterization of the "power plant" strategy).

livelihood of our coal mining members. Contrary to EPA's claims, data made available by the U.S. Energy Information Administration (EIA) indicates that, if finalized as proposed, EPA's proposed Clean Power Plan 2.0 could force the premature retirement of up to 155 gigawatts (GW) of coal units not currently planning to retire by 2032.⁵ Additionally, NMA members also utilize coal generation to power their businesses and would be significantly impacted by EPA's rulemaking.

Early Coal Retirements Will Impact Key Power Markets & Grid Reliability

Despite EPA's acknowledgment that the proposed Clean Power Plan 2.0 is part of a broader regulatory strategy, EPA has not completed a cumulative impact analysis of its suite of regulatory actions. Instead, EPA continues to ignore clear warnings from FERC, grid operators, and other experts about the dangers of forced coal plant closures.

The NMA has consistently raised these concerns in EPA's regulatory dockets, including: (1) EPA's preliminary decisions on allowing the continued operation of certain coal combustion residual impoundments under the Resource Conservation and Recovery Act's Part A and Part B programs; (2) EPA's Clean Water Act proposed rule revising the effluent limitation guidelines and standards for the steam electric power sector; and (3) EPA's risk and technology review for the Mercury and Air Toxics Standards. Most recently, the NMA repeated these concerns in EPA's docket for the proposed Clean Power Plan 2.0.

We now share this information directly with FERC given that EPA has simply ignored these concerns. We strongly urge FERC to consider this information as it conducts its technical conference and pursues further engagement with EPA on these matters. We hope that this information serves as a building block to a more robust and honest grid reliability assessment. FERC should

⁵ See EIA, "Preliminary Monthly Electric Generator Inventory (based on Form EIA-860M as a supplement to Form EIA-860)," *available at* <https://www.eia.gov/electricity/data/eia860m/> (last visited Nov. 8, 2023). See also EIA, "Form EIA-923 Detailed Data with Previous Form Data (EIA-906/920)," *available at* <https://www.eia.gov/electricity/data/eia923/> (last visited Nov. 8, 2023). Even if all utilities could instantaneously develop the comprehensive resource plans needed to comply with EPA's Clean Power Plan 2.0, and even if they began implementing those plans immediately (before the proposed rules become final, at unprecedented risk), compliance with the control options provided in the proposal would still be impossible for the vast majority of facilities. With retirement as the only viable compliance option remaining, EPA's proposal would spell the end of coal as a significant power generating resource.

not allow EPA to continue to pursue its rulemakings blindly and without consulting the Commission or using the reliability expertise of the North American Electric Reliability Corporation (NERC). At minimum, FERC should urge EPA to conduct a supplemental rulemaking for the Clean Power Plan 2.0, subject to public comment, that re-examines grid reliability impacts and mitigation options. If EPA is allowed to finalize its “power plant strategy” before an honest reliability assessment is completed, the nation will face significant, yet preventable, adverse reliability consequences.

1. EPA Continues to Wrongfully Dismiss Grid Reliability Concerns Associated with Its “Power Plant Strategy.”

The nation’s grid reliability regulators and operators have issued clear warnings that forced coal plant closures are accelerating and now moving far faster than they can be reliably replaced. Yet, EPA continues to ignore the experts and instead has charged ahead with its “power plant strategy,” which will only accelerate the forced retirement of needed coal plants and result in a reliability crisis.

For years, NERC has sounded the alarm that our grid reliability is at risk and that policy changes require careful and thoughtful attention. Last year, NERC cautioned that managing the pace of the energy transition will be the “greatest challenge to reliability over the next 10 years.”⁶ NERC’s director of reliability assessment and performance analysis also affirmed, “there’s clear, objective, conclusive data indicating that the pace of our great transformation is a bit out of sync with the underlying realities and the physics of the system”⁷ and that “without careful planning” generation retirements, among other things, “could negatively impact the ability of the bulk power system to service the energy needs in North America over the next 10 years.”⁸

⁶ NERC Announcement, “10-Year Outlook Underscores Reliability Impacts During Rapid Energy Transition” (Dec. 15, 2022), *available at* https://www.nerc.com/news/Headlines%20DL/2022_LTRA_Release.pdf (last visited Nov. 8, 2023) (“Managing the transformation and proactively preparing for the role that the grid will play is the greatest challenge to reliability over the next 10 years.”).

⁷ Sonia Patel, “NERC Warns of Mounting Reliability Risks, Urges Preparation for Challenging Summer,” *Power Mag* (May 19, 2022), *available at* <https://www.powermag.com/nerc-warns-of-mounting-reliability-risks-urges-preparation-for-challenging-summer/> (last visited Nov. 8, 2023).

⁸ NERC Announcement, “10-Year Outlook Underscores Reliability Impacts During Rapid Energy Transition” (Dec. 15, 2022), *available at* https://www.nerc.com/news/Headlines%20DL/2022_LTRA_Release.pdf (last visited Nov. 8, 2023).

In March 2023, NERC again warned of increased reliability risks from the pace of the grid transformation and the need to evaluate reliability:

As federal and state policies continue to advance rapid transformation of the electric grid, NERC’s annual reliability assessments have shown a *steady increase in reliability risk associated with the pace at which the transformation of the grid is occurring*. We believe that the energy transition that is occurring can work reliably *but the pace of change needs to be managed and we have stressed the critical need to evaluate the impacts of these policies on reliability*.⁹

In June 2023, NERC’s President and Chief Executive Officer James Robb stated plainly at a U.S. Senate hearing on electric reliability that “[c]onventional generation is retiring at an unprecedented rate” and “we must manage the pace of the transformation in an orderly way, which is currently not happening.”¹⁰ Robb explained that:

NERC is concerned that the pace of change is overtaking the reliability needs of the system. Unless reliability and resilience are appropriately prioritized, current trends indicate the potential for more frequent and more serious long duration reliability disruptions, including the possibility of national consequence events.¹¹

NERC’s 2023 Summer Reliability Assessment found that two-thirds of the country was at elevated risk of outages should widespread heat waves occur.¹² This assessment was another clear warning that large swaths of the country faced the very real threat of blackouts should the weather not cooperate. NERC’s assessment also showcased that the nation is increasingly

⁹ NERC, Statement on EPA, DOE, Agreement Supporting Electric Reliability (Mar. 10, 2023), *available at* <https://www.nerc.com/news/Pages/Statement-on-EPA,-DOE-Agreement-Supporting-Electric-Reliability.aspx> (last visited Nov. 8, 2023) (emphasis added).

¹⁰ Testimony of James B. Robb, President and Chief Executive Officer, NERC, Before the Committee on Energy and Natural Resources, United States Senate, “The Reliability of Electric Service in the United States in Light of Recent Reliability Assessments and Alerts” at 1 & 3 (June 1, 2023), *available at* <https://www.energy.senate.gov/services/files/D47C2B83-A0A7-4E0B-ABF2-9574D9990C11> (last visited Nov. 8, 2023).

¹¹ *Id.* at 1.

¹² NERC, Newsroom, “Two-Thirds of North America Faces Reliability Challenges in the Event of Widespread Heatwaves” (May 17, 2023), *available at* <https://www.nerc.com/news/Pages/Two-thirds-of-North-America-Faces-Reliability-Challenges-in-the-Event-of-Widespread-Heatwaves.aspx> (last visited Nov. 8, 2023).

short of the dispatchable capacity it needs to maintain resource adequacy during periods of peak demand.

The NMA even shared with EPA statements made by FERC in a May 2023 Senate Energy and Natural Resources Committee hearing, cautioning Congress about the nation's reliability crisis. We highlighted what Commissioner Mark Christie told the Committee:

The United States is heading for a reliability crisis. I do not use the term "crisis" for melodrama, but because it is an accurate description of what we are facing. I think anyone would regard an increasing threat of system-wide, extensive power outages as a crisis...In summary, the core problem is this: Dispatchable generating resources are retiring far too quickly and in quantities that threaten our ability to keep the lights on. The problem generally is not the addition of intermittent resources, primarily wind and solar, but the far too rapid subtraction of dispatchable resources, especially coal and gas.¹³

We also highlighted Commissioner James Danly's remarks:

We know that there is a looming resource adequacy crisis. Our market operators have been explicitly telling us as much for years. Both MISO [Midcontinental Independent System Operator] and ISO-NE have warned about upcoming scarcity and PJM, the nation's largest wholesale market, and the one that serves Washington, D.C., has recently raised the alarm about impending shortfalls. Were any more proof required of our markets' failure, in the midst of PJM's dire warnings, somehow the prices in its procurement auction, at a time of impending scarcity, went down.¹⁴

We pointed out the exchange between Senator Hoeven (R-N.D.) and Commissioner Chairman Phillip on the retirement of coal plants, when Commissioner Phillip expressed concern, testifying, "I am extremely concerned about the pace of retirements we are seeing of generators which are needed for reliability on our system. NERC and the grid operators have

¹³ U.S. Senate Energy and Natural Resources Committee, Full Committee Hearing to Conduct Oversight of FERC (May 4, 2023), *available at* <https://www.energy.senate.gov/hearings/2023/5/full-committee-hearing-to-conduct-oversight-of-ferc>.

¹⁴ *Id.*

warned us about this. We might be fuel neutral, but we are not reliability neutral.”¹⁵

We also shared the exchange with Chairman Manchin (D-W.Va), when he asked each of the Commissioners if the grid could “eliminate coal and maintain a reliable system,” and the resounding response was “no.” Chairman Phillips answered, “It would not.” Commissioner Danly answered, “No. Coal is required...and it would be impossible to replace it.” Commissioner Clements answered, “Right now, today, no.” Commissioner Christie answered, “Coal is more reliable than gas. We need to keep coal generation available for the foreseeable future.”¹⁶

The NMA urged EPA to heed FERC’s warnings and reminded EPA that the U.S. Court of Appeals for the Fifth Circuit has admonished the agency regarding its expertise on grid reliability in another matter:

As EPA’s reliance on an outside expert demonstrates, *EPA has no expertise on grid reliability*—its sister agency FERC, uninvolved in this regulatory scheme or this rulemaking, is the federal expert in that area....Particularly when contrasted with the expert report of ERCOT, the group with the greatest knowledge regarding questions of grid reliability in Texas, EPA’s truncated discussion of grid reliability indicates that the agency may not have fulfilled its statutory obligation to consider the energy impacts of the [Federal Implementation Plan].¹⁷

The NMA has also repeatedly shared with EPA the warnings of the regional transmission organizations (RTOs), who are at the front lines of the reliability crisis and have repeatedly cautioned about the dramatic pace of coal plant closures and the impact on reliability and their regional grids. For example, a recent PJM analysis could not be clearer regarding the real reliability issues in that region. The study showed that 40 GW of existing generation are at risk of retirement by 2030. This figure is composed of: 6 GW of 2022 deactivations, 6 GW of announced retirements, 25 GW of potential policy-driven retirements and 3 GW of potential economic retirements. Combined, this represents 21 percent of PJM’s current installed capacity.¹⁸ To put that into perspective, that is the equivalent of losing the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Texas v. EPA*, 829 F.3d 405, 434 (5th Cir. 2016) (emphasis added).

¹⁸ Energy Transition in PJM: Resource Retirements, Replacements & Risks at 2 (Feb. 24, 2023), available at <https://www.pjm.com/-/media/library/reports-notice/special->

electricity needed to power 30 million homes. While the losses will be primarily from the closure of coal plants – plants that can provide electricity 24/7 and which are often called upon to ramp up during periods of peak demand – the additions will be largely from intermittent renewable capacity, which, by definition, is often unavailable when needed.

PJM’s study also found it possible that the “current pace of new entry would be insufficient to keep up with expected retirements and demand growth by 2030.”¹⁹ PJM’s analysis also looked at “the combined requirements of these regulations and their coincident compliance periods” and found that they “have the potential to result in a significant amount of generation retirements within a condensed timeframe.”²⁰ PJM’s President and CEO Manu Asthana this summer warned:

Currently, the nation is developing environmental and reliability policy in separate silos with limited and not very transparent coordination between the environmental and reliability regulators. Increased coordination and synchronization of the nation’s environmental and reliability needs may require discrete changes to the statutes governing each agency’s mission to embrace this effort.²¹

Asthana rightfully asserted:

[T]he electric grid is one of our most important infrastructure assets. It is critical to both the economy, health and security of all Americans. We need to give protection and enhancement of the grid the same level of focus that we give to our equally important environmental goals.”²²

MISO too has warned it is at risk of resource adequacy shortfalls in coming years due to power plant retirement and the expected growth in electricity demand. Last June, it issued a warning of tight capacity demands as the grid struggled to keep up with soaring demand from a heatwave. In comments

[reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx](https://www.energy.senate.gov/services/files/2098C524-7B71-4D39-BFF1-295E6E75BDB7)
(last visited Nov. 8, 2023).

¹⁹ *Id.*

²⁰ *Id.* at 7.

²¹ Testimony of Manu Asthana, President and CEO, PJM Interconnection, U.S. Senate, Committee on Energy and Natural Resources at 9 (June 1, 2023), *available at* <https://www.energy.senate.gov/services/files/2098C524-7B71-4D39-BFF1-295E6E75BDB7> (last visited Nov. 8, 2023).

²² *Id.*

on EPA's CCR rule,²³ MISO explained that "the loss [due to closure] of any significant portion of the 3.1 GW from the five generators considered . . . would push resource adequacy coverage of regional demand into dangerous territory."²⁴ MISO added, "there is very little excess generating capacity (or none at all) to cover demand for electricity, plus the required reserve margin, in the immediate future."²⁵

Specifically related to the proposed Clean Power Plan 2.0, MISO, PJM, the Electric Reliability Council of Texas, and the Southwest Power Pool joined together in filing comments raising concern about the proposed rule's impact to baseload, dispatchable power plants.²⁶ Specifically, the Joint ISOs/RTOs warned:

The Joint ISOs/RTOs are concerned that the substance of the Proposed Rule as presently configured, as well as its timing, have the potential to materially and adversely impact electric reliability. Moreover, the Proposed Rule, when combined with other EPA rules and other policy actions, could well exacerbate the disturbing trend and growing risk wherein the pace of retirements of generation with attributes needed to ensure grid reliability is rapidly exceeding the commercialization of new resources capable of providing those reliability attributes.²⁷

The Joint ISOs/RTOs also cautioned:

If the technology and associated infrastructure fail to timely materialize, then the future supply of compliant generation—given

²³ Comments of the Midcontinent Independent System Operator (MISO) to EPA at 6-8, *In re Receipt of Waste from Dallman Power Station Based on the Interim Based Determination*, EPA-HQ-OLEM-2021-0588-0010, *In re Receipt of Waste from Erickson Power Station Based on the Interim Based Determination*, EPA-HQ-OLEM-2021-0589, *In re Receipt of Waste from Meramac Power Station Based on the Interim Based Determination*, EPA-HQ-OLEM-2021-0592, *In re Receipt of Waste from Ottumwa Power Station Based on the Interim Based Determination*, EPA-HQ-OLEM-2021-0593, *In re Receipt of Waste from Sioux Power Station Based on the Interim Based Determination*, EPA-HQ-OLEM-2021-0594 (Feb. 23, 2022).

²⁴ *Id.* at 16.

²⁵ *Id.* at 6.

²⁶ Joint Comments of Electric Reliability Council of Texas, Inc, Midcontinent Independent System Operator, Inc., PJM Interconnection, L.L.C., and Southwest Power Pool, Inc., EPA-HQ-OAR-2023-0072-0673 (Joint ISOs/RTOs), available at <https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0072-0673> (last visited Nov. 8, 2023). The Joint ISOs/RTOs are "responsible for maintaining the reliability of the bulk power system that provides electric service to over 154 million Americans." *Id.* at 4.

²⁷ *Id.* at 1.

forced retirements of non-compliant generation—would be far below what is needed to serve power demand, increasing the likelihood of significant power shortages.²⁸

The Joint ISOs/RTOs even told EPA:

[T]he record is insufficient for the EPA to conclude that the Proposed Rule will not adversely impact reliability. The EPA should therefore reconsider moving forward with the Proposed Rule in its present form.²⁹

Members of Congress have also weighed in. Thirty-nine senators requested that EPA withdraw the Clean Power Plan 2.0 proposed rule explaining, among other things, that the rule would negatively impact electricity reliability across the country due to the premature closure of affordable, reliable baseload electricity. Their letter refers to warnings from FERC, NERC, and RTOs on “increasing risks to the stability of the electric grids in the United States and [who all] agree that we are heading towards a reliability crisis that will be exacerbated by policy-driven retirements.”³⁰

From NMA’s vantage point, EPA has turned a blind eye to these warnings. The NMA hopes these concerns are examined during FERC’s technical conference and urges FERC to continue its oversight of this critical issue.

2. EPA Has Failed to Constructively Work with Federal and Regional Grid Experts to Analyze the Cumulative Impacts of the “Power Plant Strategy” Rules Before Finalization.

Given all these impacts and reliability concerns, it is astounding that EPA is moving forward with its “power plant strategy” without doing its due diligence and consulting with federal and regional grid experts. While FERC’s technical conference is focused on the proposed Clean Power Plan 2.0, EPA’s regulatory agenda is far more expansive and also deserves attention and oversight. Remarkably, EPA has never analyzed or accounted for the important and significant cumulative impacts that will occur from the agency’s full suite of power plant rulemakings. As EPA is well aware, and has publicly touted, it’s actions will create a far-reaching regulatory program designed to transform the power sector by forcing premature coal plant

²⁸ *Id.* at 4.

²⁹ *Id.* at 5.

³⁰ See “Capito, 38 Senators Call on EPA to Withdraw Power Plant Rules,” *available at* <https://www.capito.senate.gov/news/in-the-news/capito-38-senators-call-on-epa-to-withdraw-power-plant-rules-> (last visited Nov. 8, 2023).

retirements. EPA's agenda – if fully enacted – will cause significant damage to the resilience of the nation's electricity supply.

The NMA has urged EPA to convene an interagency process and complete a cumulative impact analysis of the reliability issues associated with its entire "power plant strategy" before finalizing this rule. Convening an interagency process aligns with Executive Order (EO) 13563, signed by President Obama, which explicitly recognizes:

Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. *Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules.* In developing regulatory actions and identifying appropriate approaches, each agency *shall attempt to promote such coordination, simplification, and harmonization.*³¹

Cumulative analysis is required by EOs 12866 and 13563, which direct each agency to "tailor its regulations to impose the least burden on society...taking into account, among other things, and to the extent practicable, *the costs of cumulative regulations.*"³² These principles were reaffirmed in President Biden's EO 14094, "Modernizing Regulatory Review."³³

To our knowledge, EPA has not acted in accordance with those requirements. We strongly urge FERC to impress upon EPA the importance of consulting with grid experts in completing a comprehensive cumulative impacts analysis on the suite of regulations impacting coal generation. FERC should have a significant role in contributing to this analysis and ensuring that a final analysis is reflective of existing grid realities.

³¹ EO 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3,821 (Jan. 18, 2011), available at <https://www.govinfo.gov/content/pkg/FR-2011-01-21/pdf/2011-1385.pdf> (last visited Nov. 8, 2023) (emphasis added).

³² EO 12866, Regulatory Planning and Review, 58 Fed. Reg. 51,735 (Sep. 30, 1993), available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf> (last visited Nov. 8, 2023) (emphasis added). See also EO 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3,821 (Jan. 18, 2011), available at <https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review> (last visited Nov. 8, 2023).

³³ EO 14094, Modernizing Regulatory Review, 88 Fed. Reg. 21,879 (April 11, 2023) available at <https://www.govinfo.gov/content/pkg/FR-2023-04-11/pdf/2023-07760.pdf> (last visited Nov. 8, 2023).

Earlier this year, EPA itself recognized the importance of interagency coordination when it signed a memorandum of understanding (MOU) with the U.S. Department of Energy (DOE) promising “interagency cooperation and consultation on electric sector resource adequacy and operational reliability.”³⁴ However, the NMA is not aware of any public meetings to further the goals of the MOU. In fact, there is no public information that EPA or DOE have implemented this MOU. At the same time, EPA has continued to churn out proposed rules that will have significant and direct impacts on resource adequacy and operational reliability. It is beyond time for EPA and DOE to put the MOU into action instead of just simply papering over a critical issue for the nation.

We encourage FERC to raise this MOU at the technical conference and question EPA Principal Deputy Assistant Administrator Joe Goffman on EPA’s plans to consult with FERC and other grid experts in advance of finalizing any rule in its “power plant strategy.” The NMA also urges FERC to work with EPA to complete a cumulative impacts analysis of the reliability impacts of EPA’s “power plant strategy” that is informed by direct expert consultation with FERC, NERC, RTOs, and other grid experts. If EPA is indeed working with the DOE and other agencies and stakeholders to evaluate reliability impacts from the agency’s power sector rulemakings, it should provide information about those meetings in a public docket, subject to public comment.

Conclusion

The NMA welcomes FERC’s technical conference as the first necessary step towards better understanding grid experts’ concerns regarding the Clean Power Plan 2.0. However, more needs to be done to analyze EPA’s broader regulatory agenda for power plants. The Clean Power Plan 2.0 proposed rule, which on its own could monumentally shape the future of coal generation, is not the only rulemaking that FERC should be analyzing with NERC, regional transmission organizations, and EPA. We encourage FERC to schedule

³⁴ EPA and DOE, Joint Memorandum on Interagency Communication and Consultation on Electric Reliability (March 9, 2023), *available at* <https://www.epa.gov/system/files/documents/2023-03/DOE-EPA%20Electric%20Reliability%20MOU.pdf> (last visited Nov. 8, 2023). NERC has expressed the importance of an interagency review process to consider reliability risks. In a public statement on the signing of the MOU, NERC applauded EPA for “formalizing inter-agency coordination, and recognizing the role of other critical stakeholders” in this process. See NERC, Statement on EPA, DOE, Agreement Supporting Electric Reliability (Mar.10, 2023), *available at* <https://www.nerc.com/news/Pages/Statement-on-EPA,-DOE-Agreement-Supporting-Electric-Reliability.aspx> (last visited Nov. 8, 2023)

additional technical conferences in the near term to discuss the impacts of EPA's broader "power plant strategy."

We also strongly recommend that FERC advocate for a robust cumulative impacts analysis on EPA's "power plant strategy" that is developed through a transparent process with opportunity for public comment. This analysis must be fact-driven, go beyond the resource adequacy analyses EPA conducted on the proposed Clean Power Plan 2.0, include an honest assessment of reliability impacts from the retirement of baseload coal generation and replacement with new generating resources at lower capacity factors, and address future demand growth on the nation's electricity supply. Finally, this analysis must be informed by the expertise housed at FERC and NERC, as well as on-the-ground real-time information from the regional grid operators and other grid experts.

If you have any questions regarding the NMA's comments, please contact me at tbridgeford@nma.org or (202) 463-2629.

Sincerely,

A handwritten signature in black ink, reading "Tawny Bridgeford". The signature is written in a cursive, flowing style.

Tawny A. Bridgeford
General Counsel & Senior Vice President, Regulatory Affairs