



FEDERAL ENERGY REGULATORY COMMISSION
Commissioner Mark C. Christie

August 13, 2024

The Honorable Cathy McMorris Rodgers
Chair, Committee on Energy and Commerce

The Honorable Jeff Duncan
Chair, Subcommittee on Energy, Climate, and Grid Security

The Honorable Earl L. “Buddy” Carter
Chair, Subcommittee on Environment, Manufacturing, and Critical Materials

2125 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515-6115

Re: Questions regarding Clean Power Plan 2.0

Dear Chair McMorris Rodgers, Chair Duncan, and Chair Carter:

This letter responds to your letter dated July 16, 2024, which was addressed to each of the members of the Federal Energy Regulatory Commission (“FERC” or “Commission”). In your letter, you ask each of us to answer several questions. Below, I reprint each of your numbered questions (in italics) and insert my response immediately following each one.

At the outset, let me emphasize that many of the broader issues raised in your questions were largely addressed in my Opening Statement to your committee’s Subcommittee on Energy, Climate and Grid Security on July 24, 2024 (“Opening Statement”), and in my oral answers to questions from subcommittee members during the hearing.

- 1) *Please provide all communications between the Chairman, Commissioners, and FERC staff with the EPA administrator and EPA staff relating to the development of the proposed Clean Power Plan 2.0 rule.*

I cannot provide any communications from other offices or staff. I can report only my own. I met by Teams video with EPA’s Mr. Joe Goffman and other EPA staff regarding the proposed power plant and other EPA regulations on November 22, 2022. I met again by Teams video in November of 2023, shortly after the FERC Reliability Technical Conference held on November 9, 2023, at which Mr. Goffman testified on the proposed power plant rule. In both Teams meetings I raised with Mr. Goffman and his EPA team my serious concern that their proposed regulations would have a very damaging impact on grid reliability by forcing the premature retirements of vitally needed dispatchable generation units and preventing the construction of sufficient new dispatchable resources.



- 2) *Do any generators participating in the FERC-jurisdictional markets utilize carbon capture technology at a sustained capture rate of 90 percent? Do any generators participating in the FERC-jurisdictional markets use carbon dioxide pipelines to transport captured carbon dioxide?*

The overwhelming weight of the expert evidence indicates that a 90% carbon capture standard applied to generation units fueled by gas or coal is neither technically nor commercially feasible. I am not aware of any generating units that are commercially successful in energy or capacity markets today that have met such an unrealistic standard.

- 3) *Did FERC participate in the Office of Management and Budget's Office of Information and Regulatory Affairs interagency review process to weigh in on EPA's Clean Power Plant 2.0 Rule?*

FERC filed no formal public comments in the evidentiary record of the power plant rulemaking at EPA or elsewhere, to my knowledge. "Staff-to-staff" and other private conversations that are not part of the public record have no legal weight, and it is clear from EPA's final rule that they had little if any practical weight either, as EPA apparently dismissed any serious concerns it heard from FERC staff, if any serious concerns were communicated. The so-called "reliability assurance mechanism" in the final rule is essentially just a paper drill that gives FERC no decisional role, only advisory, in preventing premature retirements of critically needed generation resources. It is so narrowly drafted that it will not materially alleviate the fundamental threats to reliability the rule will cause.

- a) *If not, please explain why FERC did not participate in this process.*

This question is best directed to the Chairman.

- 4) *What plans does FERC have in place to work with jurisdictional organizations and stakeholders to prevent grid disruptions stemming from the Clean Power Plan 2.0? Please provide a detailed explanation of your plans and the stakeholders with whom you are working.*

If the EPA's new power plant rule survives court challenge, it will force the retirements of nearly all remaining coal generation plants and will prevent the construction of vitally needed new combined-cycle baseload gas generation. See my Opening Statement. This loss of vitally needed dispatchable generation resources will be catastrophic. There is very little FERC can do to reverse the effects of the EPA's power plant regulation. FERC, as well as state regulators, who are responsible for resource adequacy in their states, will have to attempt to mitigate the negative consequences of the rule on reliability and consumer costs. I emphasize, however, that once critically needed power plants retire, they are gone.

- 5) *Section 202(c) of the Federal Power Act allows FERC, when it determines that an emergency exists, to "temporarily order connections of facilities, and generation, delivery, interchange, or transmission of electricity as*



determined to best meet the emergency and serve the public interest.”

(a) Do you expect that Section 202(c) will be needed to prevent blackouts and brownouts, as a result of the Clean Power Plan 2.0?

As explained in (b) below, it will likely not be effective.

(b) Do you believe that Section 202(c) is an effective tool to prevent blackouts and brownouts? If not, what specifically about the 202(c) process would need to change in order to make it effective?

No. The reality is that if the grid has a serious shortfall in power generation resources because necessary resources have retired prematurely, FERC cannot simply order them back onto the grid. Once these needed resources retire, they are gone.

(c) What steps must you take to make the decision to trigger emergency measures under 202(c)? Please provide a detailed explanation of any requests or work pertaining to a 202(c) order, including with other federal, state, and private parties.

Please see answer to (b) above.

(d) Section 61002 of the FAST Act, “Resolving Environmental and Grid Reliability Conflicts,” amended Section 202(c) to clarify that an emergency order issued by FERC will override federal, state, and local environmental laws.

(i) Have you discussed Section 61002 with the EPA or the Department of Energy?

No. I have no knowledge whether any other commissioners or staff have.

(ii) Please explain the substance of any such discussions.

n/a

6) *A waiver under Section 202(c) allows a resource to operate for 90 days. Given that the Clean Power Plan 2.0 could create reliability and compliance issues over multiple years and have considerable impacts on the viability of the markets you regulate, is a new longer-term mechanism needed to maintain resources for reliability? Is a new longer-term mechanism needed to maintain resource adequacy?*

The fundamental threat to reliability is the premature retirements of necessary resources. Waivers of only 90 days from the federal regulations causing their retirement will not remotely solve the core problem. Only *permanent* waivers from such regulations would have any appreciable impact, and only if these waivers are granted *before* the generation units announce retirement so generators can obtain financing to continue operating.



7) *Has FERC assessed the market impacts of the final rule and, if not, when will FERC do so?*

I am not aware of any such assessments. The second question is best addressed to the Chairman.

a) *How will this rule affect capacity and energy market prices?*

When supply is decreasing and demand is increasing, prices rise. Econ 101. The same will apply in energy and capacity markets.

b) *How will these rules affect investment signals for new dispatchable resources, like natural gas? Will resources be able to recover the necessary revenues through the FERC-jurisdictional markets?*

Please see my Opening Statement.

8) *How does FERC propose to allow resources affected by the rule to retain necessary revenues in the market?*

No specific proposal has been made.

a) *If resources affected by the EPA's rule are unable to compete in the relevant markets, what amount of resources will abruptly retire?*

Please see my Opening Statement.

b) *What impact(s) will this have on resource adequacy?*

Please see my Opening Statement.

c) *What impact(s) will this have on reliability, especially during peak conditions during summer and winter?*

Please see my Opening Statement.

I thank you for your questions.

Sincerely,

/s/ Mark C. Christie

Commissioner Mark C. Christie