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Via federal eRulemaking portal (regulations.gov)
Via E-mail (fellner.christian@epa.gov, thompson.lisa@epa.gov)
Docket No. EPA-HQ-OAR-2023-0072

Mr. Christian Fellner and Ms. Lisa Thompson
Sector Policies and Programs Division (D243-02)
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711

Re: Class of '85 Regulatory Response Group's Second Request for an Extension of the Comment Period on EPA's Clean Air Act Section 111 Proposal

Dear Mr. Fellner and Ms. Thompson:

On behalf of the Class of '85 Regulatory Response Group ("Class of '85" or Group"),[1] I am writing to request at least a 60-day extension of the comment period for the proposed revisions to the new source performance standards ("NSPS") for greenhouse gas ("GHG") emissions from new, modified, and reconstructed fossil fuel-fired electric generating units ("EGUs"); the proposed emission guidelines for GHG emissions from existing fossil fuel-fired EGUs; and repeal of the Affordable Clean Energy rule ("Proposal"). The Proposal was published in the *Federal Register* on May 23, 2023, at 88 Fed. Reg. 33,240. On June 16, 2023, EPA published in the *Federal Register*, at 88 Fed. Reg. 39,390, a notice extending the deadline to submit public comments by 15 days, to August 8, 2023. 88 Fed. Reg. 39,390 (June 16, 2023).

The Class of '85 submitted an initial request for a 60-day extension of the comment period on June 14, 2023. While the Group appreciates the 15-day extension that EPA granted, it provides insufficient relief to the Group to prepare comments that address all of the proposed requirements included in the Proposal, which includes two new Subparts to 40 C.F.R. Part 60 that will apply to fossil fuel-fired electric generating units ("EGUs") (Subpart TTTTa (NSPS for new, modified and reconstructed EGUs) and Subpart UUUUb (emission guidelines for existing EGUs)).

[1] The Class of '85 is a voluntary, ad hoc coalition of over 40 electric generating companies from across the country that has been actively involved in the development of regulations to implement the Clean Air Act ("CAA") for more than 30 years.

Further, concurrent with, and since granting a 15-day extension of the comment period on the Proposal, EPA issued additional information relating to the Proposal that requires analysis by the Group and likely will lead to additional comments: (1) EPA issued a FAQs Memorandum to the Docket, dated June 12, 2023, on applicability of the proposed emission guidelines to existing stationary combustion turbines ("FAQs Memo"),[2] and (2) on July 7, 2023, EPA released additional modeling and an updated baseline analysis in support of the Proposal and provided a supporting memorandum ("Additional Modeling Memo").[3] For the reasons discussed below, both of these actions, in addition to the reasons addressed in the Group's June 14, 2023 request for an extension, warrant a further extension of the comment period for at least 60 days, until at least October 9, 2023.

First, EPA issued the FAQs Memo to address questions that the Agency received on the applicability of the Proposal to existing stationary combustion turbine EGUs. In part, the FAQS Memo appears to modify applicability determinations that were made in the Proposal. For example, according to EPA in the FAQs Memo, stationary combustion turbines that commenced construction or reconstruction prior to May 23, 2023, are considered affected EGUs that are subject to the emission guidelines in Subpart UUUUb. However, the regulatory text for Subpart UUUUb in proposed 40 C.F.R. § 60.5850b(b) contradicts that conclusion as does the following statement in the Proposal.

> Section 111(a)(6) of the CAA defines an 'existing source' as 'any stationary source other than a new source. Therefore, the emission guidelines would not apply to any EGUs that are new after January 8, 2014, or reconstructed after June 18, 2014, the applicability dates of 40 CFR part 60, subpart TTTT.[4]

Given that stationary combustion turbines are considered EGUs under the Proposal, EPA has failed to address the contradiction between the statements in the FAQs Memo and the Proposal, or how its explanation in the FAQs Memo comports with the Clean Air Act. All of the responses that EPA provided in the FAQs Memo should be issued in a supplemental proposal, with its own comment period. At the least, EPA should extend the comment period by an additional 60 days to ensure that the public has an opportunity to evaluate the responses in the FAQS Memo and develop comments.

Second, along with the Additional Modeling Memo, EPA added 22 attachments and four new IPM model run outputs to the rulemaking docket. According to EPA, "the additional modeling reflects EPA's analysis of the integrated proposal, *i.e.*, modeling the requirements on existing combustion turbines and the third phase of the NSPS together with the requirements that

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[2] Applicability of Emission Guidelines to Existing Stationary Combustion Turbines: FAQs, dated June 12, 2023, https://www.epa.gov/system/files/documents/2023-06/Applicability%20of%20Emission%20Guidelines%20to%20Existing%20Stationary%20Combustion%20Turbines.pdf

[3] Integrated Proposal Modeling and Updated Baseline Analysis ("Additional Modeling Memo"), dated Jul. 7, 2023, https://www.epa.gov/system/files/documents/2023-07/Integrated%20Proposal%20Modeling%20and%20Updated%20Baseline%20Analysis.pdf

[4] 88 Fed. Reg. at 33,342.

were already modeled as part of the Regulatory Impact Analysis for [the Proposal]."[5] This is information is clearly supplemental to the Proposal, leaving only one month for the public to this additional information. Given the complexity of the rulemaking prior to EPA's addition of the integrated modeling results, it is imperative that EPA grant additional time for the public to review, analyze, and craft comments addressing the integrated modeling results.

Moreover, the Additional Modeling Memo itself contains statements that indicate EPA is considering modifying the Proposal. For example, in the Additional Modeling Memo, EPA states that, although the Proposal applies the 300 MW threshold for existing stationary combustion turbines on a unit-level basis and that all of its modeling thus far is on that same basis, "comments from stakeholders to date have led the EPA to also consider applying the threshold on a plant-level basis," and "EPA is considering the appropriate MW threshold for such a plant-level approach and whether such an approach should also include a unit-level MW threshold."[6] This is new information that has not been included in the Proposal and would be a significant change, thereby warranting an extension of the comment deadline, at the least. However, if EPA is contemplating such an option, the Class of '85 urges EPA to specifically raise it in a supplemental proposal that is published in the *Federal Register* to ensure that interested members of the public are aware that this is an issue on which they should comment.

Given all of the new information that EPA added to the docket and the complexity of the Proposal itself and its wide-ranging implications for fossil fuel-fired EGUs throughout the country, including those owned and/or operated by Class of '85 members, EPA should offer such companies sufficient time to appropriately analyze and prepare constructive comments on the Proposal that will help the Agency ensure the final regulations for new and existing fossil fuel-fired EGUs are legally and technically sound. **Therefore, the Group requests that EPA extend the deadline for submitting comments on the Proposed Rule by at least 60 days, from August 8, 2023, to at least October 9, 2023.**[7]

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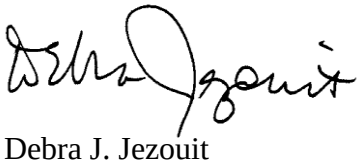
[5] EPA, Analysis of the Proposed Greenhouse Gas Standards and Guidelines Power Sector Modeling, https://www.epa.gov/power-sector-modeling/analysis-proposed-greenhouse-gas-standards-and-guidelines (last accessed July 20, 2023).

[6] Additional Modeling Memo at 5.

[7] As noted above and in the Group's June 14, 2023 request for an extension of the comment period (Doc. ID EPA-HQ-OAR-2023-0072-0118), the deadline for submitting comments should not be triggered until EPA has published in the *Federal Register*: (1) the responses to applicability questions addressed in the FAQs Memo; (2) any revisions to the Proposal identified in the Additional Modeling Memo that EPA is contemplating; and (3) the proposed regulatory text for Subparts TTTTa and UUUUb. To ensure that the public is afforded a meaningful opportunity to comment on proposed rules, the 60-day comment period should not run until the public has received *fair and adequate notice* of all of these elements of the Proposal.

If you have any questions regarding the Class of ’85’s request for an extension of the comment period, please contact me at debra.jezouit@bakerbotts.com or 202.639.7728, or Tiffany Cheung at tiffany.cheung@bakerbotts.com or 202.714.5886.

Sincerely,



Debra J. Jezouit
Tiffany W. Cheung