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July 24, 2023

**Via Electronic Mail**
**Filed in EPA Docket ID No. EPA-HQ-OAR-2023-0072**

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

**Re: Third Request for Further Extension of Comment Period**

Dear Administrator Regan:

On June 16, 2023, the U.S. Environmental Protection Agency ("EPA" or "Agency") published a notice in the Federal Register announcing a 15-day extension of the comment period on EPA's proposed rules entitled "New Source Performance Standards for Greenhouse Gas Emission 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" ("Proposed Rules").[1] The deadline for filing comments on the Proposed Rules is now August 8, 2023.

The Power Generators Air Coalition ("PGen")[2] has written to EPA twice to express its concern that the comment period on the Proposed Rules is grossly inadequate, even with the 15-day extension. On May 23, 2023, PGen requested a 60-day extension of the comment period.[3] PGen again requested for EPA to extend the comment period on the Proposed Rules by at least 60

[1] 88 Fed. Reg. 39,390 (June 16, 2023).

[2] PGen is an incorporated nonprofit 501(c)(6) organization whose members are diverse electric generating companies—public power, rural electric cooperatives, and investor-owned utilities—with a mix of solar, wind, hydroelectric, nuclear, and fossil generation. PGen's members include leaders in the fundamental transition to cleaner energy that is currently occurring in the industry. PGen and its members work to ensure that environmental regulations support a clean, safe, reliable, and affordable electric system for the nation. Additional information about PGen and its members can be found at https://pgen.org.

[3] Doc. ID No. EPA-HQ-OAR-2023-0072-0041.

days on June 30, 2023.[4] On July 20, 2023, EPA sent a letter to PGen declining to extend the comment period.[5] PGen urges EPA to reconsider and renews its request for an extension of the comment period by 60-days.

As PGen explained in its previous letters, PGen members own and operate fossil fuel-fired electric generating units ("EGUs") that are the subject of the Proposed Rules, and many have resource plans that call for the addition of new "firm" power from fossil fuel generation that are also the subject of this rulemaking. As a result, PGen members have a powerful interest in the Proposed Rules.

EPA's refusal to extend the comment period is particularly troubling in light of the fact that on July 7, 2023, EPA posted a 32-page memorandum to the docket entitled "Integrated Proposal Modeling and Updated Baseline Analysis." This document was accompanied by 22 attachments and four new IPM model run outputs, with each model run containing 18 separate Microsoft Excel spreadsheet outputs totaling 129 megabytes of data. EPA released this substantial new information with a mere 21 business days left in the comment period. These new data materially change EPA's original analysis of the Proposed Rules.

PGen has retained an expert, James Marchetti, to analyze the IPM modeling for the Proposed Rules. This is an onerous task—particularly because EPA has refused to provide any parsed files to stakeholders to evaluate how IPM handled EGUs in both the base and policy cases of the Proposed Rules. The lack of parsed files has led Mr. Marchetti and other experts evaluating the data to have to go through extensive evaluation and comparison to evaluate the IPM data that is exceptionally time consuming.

PGen was already concerned about the ability of its expert to review the underlying data given the lack of parsed files. EPA's release of revised IPM model run outputs with a month left in an already too short comment period has led to Mr. Marchetti having to restart his original evaluation of the files. Given the need for Mr. Marchetti to restart, the need for the comment period to be extended has become even more acute.

The Proposed Rules, which will have an extraordinary impact on PGen's members, are extremely technically complex. Courts have said that the Administrative Procedure Act's requirement to provide notice and comment (which the Clean Air Act mirrors in section 307(d)) is intended "(1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review." *Prometheus Radio Project v. FCC*, 652 F.3d 431, 449 (3d Cir. 2011); *accord Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1404 (9th Cir. 1995) ("The purpose of the notice and comment requirement is to provide for meaningful public participation in the

[4] Doc. ID No. EPA-HQ-OAR-2023-0072-0165.

[5] Letter from P. Tsirigotis, Director, EPA Office of Air Quality Planning and Standards, to A. Wood, Counsel for the Power Generators Air Coalition (July 20, 2023).

rule-making process."). The current comment period fails to meet this statutory standard for all of the reasons provided here as well as the reasons provided in our previous letters.

If EPA continues to refuse to extend the comment period—even though it is being told repeatedly by stakeholders, states, and elected officials that the time period is insufficient—the Agency runs the risk of having a court find that EPA violated the Administrative Procedure Act and the Clean Air Act in connection with this rulemaking.

EPA needs to extend the comment period to fulfill its statutory obligation to provide a meaningful opportunity for interested stakeholders to review and comment on the Proposed Rules, as well as the key data underlying the Proposed Rules. It has failed to do so here and needs to rectify that situation immediately. Because the deadline is rapidly approaching, PGen would appreciate being informed of any additional time that the Agency can provide as soon as possible.

Thank you for your consideration of this request.

Respectfully submitted,

/s/ *Allison D. Wood*
Counsel to the Power Generators Air Coalition

cc: Joseph Goffman, Principal Deputy Assistant Administrator
Christian Fellner, Sector Policies and Programs Division, OAQPS
Lisa Thompson, Sector Policies and Programs Division, OAQPS