U.S. Chamber of Commerce

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July 13, 2023

Submitted via REGULATIONS.GOV

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

Re: Updated and Integrated Modeling Supplement to Proposed Rule, 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 Fed. Reg. 33,240-33,420, May 23, 2023)

Dear Administrator Regan:

On May 26, 2023, the U.S. Chamber of Commerce ("Chamber") requested a comment period extension of at least 60 days for the proposed rules entitled *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* (or "Powerplant Rules").[1] That publication commenced an abbreviated 60-day timeline for public comment to the Environmental Protection Agency (EPA) on the Powerplant Rules, which were announced only shortly before such *Federal Register* publication.[2]

In response to the request from the Chamber and multiple other organizations seeking a longer comment period, EPA notified stakeholders that a mere 15-day extension of that comment period would be granted, with such extension thereafter published in the *Federal Register*.[3] Even with the inclusion of this small extension, the comment period for the

[1] 88 Fed. Reg. 33,240 (May 23, 2023). The Chamber's May 26, 2023 letter is available at: https://www.globalenergyinstitute.org/us-chamber-requests-epa-extend-comment-period-recent-proposed-rule-addressing-power-plant-emissions.

[2] As the Chamber noted in its previous letter requesting an extension, the EPA's prior Clean Power Plan ultimately allowed for a 135-day comment period, making the bifurcated 60-day comment period for the Powerplant Rules unreasonably short given their similar – but now even broader – scope.

[3] 88 Fed. Reg. 39,390 (June 16, 2023).

Powerplant Rules allows for barely more than half of the 135-day timeframe provided for stakeholder feedback on EPA's Clean Power Plan.

More recently, and after 5:00 p.m. EDT on Friday, July 7, 2023, EPA issued a 32-page "Memo to the Docket" titled "Integrated Proposal Modeling and Updated Baseline Analysis."[4] This analysis was accompanied by 22 attachments added to the proposed rule's regulatory docket and four new IPM model run outputs, with each model run containing 18 separate Microsoft Excel spreadsheet outputs totaling 129 megabytes of data. In EPA's own language, this significant and material new information comprises the first release from EPA to analyze "the requirements on existing combustion turbines and the third phase of the NSPS together with the requirements that were already modeled as part of the Regulatory Impact Analysis for this rulemaking."[5] This delayed release of substantial new information materially changing EPA's original analysis of the Powerplant Rules now offers just 21 business days of review and analysis prior to the current August 8, 2023, comment deadline. This situation, which is entirely of EPA's own making, merits a 60-day extension to the current comment deadline, particularly in light of the considerations discussed in the Chamber's original letter of May 26, 2023.

As the Chamber pointed out in its previous letter, the proposed rule is extraordinary and technically complex. The new information and analysis provided on July 7 further confirms this. The July 7 "Memo to the Docket" makes technical and factual claims, including claims concerning cost and demand assumptions, that raise significant questions on their face and require careful review and analysis.

For this and other reasons, it is clear that a substantial extension of the comment deadline is required in light of the Administrative Procedure Act (APA) and by related provisions of the Clean Air Act (CAA).[6] The APA and the CAA require that federal agencies provide a meaningful opportunity for interested stakeholders to review and comment on proposed regulations, as well as key data and analysis underlying the proposal.[7] This meaningful opportunity must be commensurate with the complexity of the rulemaking, and it is not appropriate for an agency to move the goalposts during an established comment period. However, that is exactly what the EPA has now done with its July 7 "Memo to the Docket" and accompanying voluminous datasets.

Indeed, the agency appears now to be modifying, or considering modifying, the proposed rule in one or more significant respects. For example, on Page 5 of the "Memo to the Docket," EPA stated that the proposed rule had applied a proposed 300 MW threshold "on a unit-level basis," but that "comments from stakeholders to date have led the EPA to also

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[4] https://www.epa.gov/system/files/documents/2023-07/Integrated%20Proposal%20Modeling%20and%20Updated%20Baseline%20Analysis.pdf

[5] https://www.epa.gov/power-sector-modeling/analysis-proposed-greenhouse-gas-standards-and-guidelines

[6] *See generally* 5 USC § 551 *et seq.*; 42 U.S.C. § 7607(d).

[7] *See, e.g.*, *American Public Gas Association v. U.S. Department of Energy*, __ F.4th __ (D.C. Cir. Jul. 7, 2023) (vacating final rule and supplement where agency relied on new literature and empirical evidence without affording notice and comment).

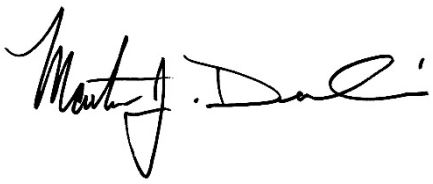
consider applying the threshold on a plant-level basis," and that "EPA is considering the appropriate MW threshold for such a plant-level approach and whether such an approach should also include a unit-level MW threshold." If EPA wishes to amend the proposed rule, it should publish an amended notice of proposed rulemaking.

Given the significant breadth, complexity, and scope of the proposed rule, the multiple actions proposed therein, and the numerous stakeholders potentially impacted by the Powerplant Rules, all now complicated further with the recent provision of what amounts to a new Regulatory Impact Analysis of the Powerplant Rules (and new supporting information, as well as one or more substantive modifications to the proposed rule) a mere month before the comment deadline, a 60-day extension to the current comment deadline is warranted.

The Chamber represents many businesses that would be directly and/or indirectly impacted by the Powerplant Rules. The broad Chamber umbrella represents numerous interested entities, including many electric utilities directly regulated by the rule and the millions of businesses large and small that depend upon reliable and affordable electricity to power their livelihoods. The Powerplant Rules propose significant changes to how our nation generates electricity and therefore have the potential to significantly impact the availability and cost of this essential commodity on businesses, individuals, and families. These far-reaching impacts across a broad stakeholder audience – now subject to entirely new modeling runs just released by the EPA – merit sufficient additional time for the assembly and development of thoughtful and comprehensive comments responsive to EPA's proposal and its "Integrated Proposal Modeling and Updated Baseline Analysis."

In light of these recent developments, 60 days of additional commenting time is needed to ensure that affected members of the business community, along with all other interested stakeholders, are able to provide accurate and appropriately detailed comments on the proposal. Such an extension will provide stakeholders adequate time to review and analyze the new information newly released by EPA, with such input necessary to inform the development of any final rule. Thank you for considering this request, and please contact us if you would like any additional information.

Sincerely,



Marty Durbin
President, Global Energy Institute
and Senior Vice President, Policy
U.S. Chamber of Commerce