

**Testimony of
Miles Keogh
on behalf of the
National Association of Clean Air Agencies
before the
Federal Energy Regulatory Commission
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Washington, DC**

Good morning. Thank you to Chairman Phillips, Commissioner Christie, Commissioner Danly, and Commissioner Clements, as well as to the FERC team, for making it possible for me to join you today – it’s a real honor. My name is Miles Keogh and I am the Executive Director of the National Association of Clean Air Agencies, or NACAA. Our members include 157 state, local, and territorial air pollution control agencies that implement and enforce the Clean Air Act. Section 111 of the Clean Air Act vests our member agencies with the ultimate responsibility to develop and submit state plans under EPA’s proposed rule governing greenhouse gases from the power sector. Therefore, I am pleased to have the opportunity to testify this morning and to share insights on the reliability and resource adequacy issues that we see related to EPA’s proposal. The views expressed in this testimony are my own, and should not be construed to reflect the views of all NACAA member agencies.

NACAA filed consensus comments from our 157 clean air agencies on EPA’s proposal in August 2023, following a robust policy conversation in our association¹. I’m submitting those comments with this testimony for the record. EPA’s proposal addresses NACAA’s January 2021 call for the federal government to respond to “the overwhelming scientific evidence of the climate crisis” with “the development of

¹ Available online at <https://www.4cleanair.org/wp-content/uploads/NACAA-Power-Plant-GHG-Rules-Comments--08032023.pdf>

nationally consistent federal rules to reduce GHG emissions from industrial and other stationary sources regulated under the Clean Air Act.”²

EPA has an obligation to develop rules responsive to the 2009 finding that climate change endangers human health and welfare; and with 2023 on course to set records for extreme weather and destructive impacts from a changing climate, a rule addressing these emissions is long overdue. However, this proposed EPA regulation is not the only, or even the main driver, of the energy transition. Integrated Resource Plans in a number of states show that the least-cost paths forward for their generation portfolios also yield strong decarbonization, as fossil units retire in a planned, coordinated, orderly manner and are replaced by less-polluting and non-polluting energy resources.

While the Clean Air Act has been a runaway success story in cleaning up our nation’s air, the climate crisis is likely to reverse those gains and challenge our agencies as they advance the protection of clean air for all. Longer, hotter ozone seasons and wildfires imperil our ability to attain and maintain the National Ambient Air Quality Standards (NAAQS), and with one in three Americans already living in areas that do not meet current standards for healthy air, this work is not yet finished.

I know everyone in this room agrees that the power sector’s transition away from contributing to the climate crisis must be both swift and skillful. Our January 2021 Transition Letter calls for “New federal programs [to] use innovative mechanisms that provide industry and the public with flexibility and transparency relative to the path to lower emissions and provide the confidence and regulatory certainty necessary for companies to make the required investments.” To address these issues, in our comments to EPA on their proposed rule, NACAA recommended that states be given clear signals for flexibilities in our state plans that address the unknowns of implementation. We called for three broad types of flexibilities:

First, presumptively approvable state plan approach flexibilities, including mass and rate based emissions trading, inter-unit averaging, and where necessary, the kinds of enforcement discretion that made compliance with the Mercury and Air Toxics (or

² This call is reflected in NACAA’s January 2021 Transition Letter to the Biden Harris Administration, available online at <https://www.4cleanair.org/wp-content/uploads/Documents/NACAA2021PresidentialTransitionDocument-01152021.pdf>

MATS) rule easier, except inasmuch as they reduce the protectiveness of the emissions reduction pathway of the overall rule;

Second, planning flexibilities allowing changes in state plans to occur without undue regulatory burdens and on a timescale that reflects the urgency of the climate crisis and the needs of our regulated stakeholders; and

Third, compliance pathway flexibilities such as the ability to accommodate other “drop-in” fuels with comparable GHG impacts; the use of multipathway compliance strategies; and extending the compliance pathways offered some technologies to be fuel-neutral, and avoid unintended consequences.

Each of these flexibilities can be included in state plans without compromising the protectiveness of the emissions reduction pathway called for overall in the proposed rule. However, NACAA does not in its comments call for a reliability exemption that would undermine the protectiveness and effectiveness of the emissions reduction pathway.

Before, during, and after developing our comments, NACAA has been engaged in dialogue with utilities, regional transmission organizations, environmental advocates, public utility commissions, and vulnerable communities to understand the broad range of possibilities and inputs that will affect its success. In so doing, four themes emerge.

First, there are near term reliability issues that arise from transitioning from one set of resource with well understood reliability characteristics to another set of resources whose reliability characteristics are less familiar and will need to be managed differently. Second, that longer term resource adequacy concerns may emerge as units come on and off the playing field through interconnection and retirement. Third, that the well-being of vulnerable communities must be prioritized in the pathways to compliance with this rule; and fourth, that these vulnerable communities, facing the most urgent perils of the climate crisis, must be afforded protections from those perils as befits anyone in this country.

In our August 2023 Comments, NACAA sought provisions in a final rule addressing all four concerns. NACAA’s comments recommended for a “multipathway” approach, enforcement flexibilities, and planning flexibilities that gives generation owners and reliability coordinators the ability to address near-term reliability concerns.

We also asked for presumptively approvable trading and averaging, plan revision and reclassification provisions, a broader suite of compliance pathways, and other rule features that should give these owners numerous options for addressing resource adequacy, if that becomes a problem. We sought time and resources to enable meaningful engagement with vulnerable communities; and we urged EPA to maintain the protectiveness of the rule's emissions pathway to ensure that equitable protection is offered to Americans. These provisions and flexibilities would allow for state plans that meet the moment.

Though not strictly part of FERC's inquiries today, I would be remiss in not mentioning that constrained timeframes for state plan development, and the significant resources that state and local agencies will need, must be addressed. Our comments call for a plan deadline extension process, particularly to enable effective meaningful engagement. NACAA also urged EPA to ensure that new regulatory responsibilities given to state and local agencies are paired with appropriate levels of federal support that can assure success of the Proposed Power Plant GHG Rules. Federal funding for state and local clean air agencies has been essentially flat since 2004; adding these responsibilities without the resources to accomplish success will be unworkable.

As we continue to engage with stakeholders like EPA, FERC, the regulated community, advocates and vulnerable constituencies, NACAA will continue to examine the proposed rule, and suggest changes to improve it. We look forward to a continued conversation with FERC. Once again, thank you for this opportunity to testify today.