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Submitted electronically via regulations.gov

Administrator Lee Zeldin
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Comments of North Dakota and Twenty-Four Other States on EPA's Proposed Repeal of Amendments to the Mercury and Air Toxics Standards ("MATS"), Docket No. EPA-HQ-OAR-2018-0794

Administrator Zeldin:

The States of North Dakota, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming ("Commenter States"), through their respective Attorneys General, submit these comments in support of EPA's proposed rule entitled "Repeal of Amendments to National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units" published in the Federal Register at 90 Fed.Reg. 25535 (Jun. 17, 2025) ("Proposed Rule").

Commenter States strongly support EPA's proposal to repeal the 2024 amendments to the Mercury and Air Toxics Standards (89 Fed.Reg. 38508 (May 7, 2024)) ("2024 MATS Rule"), which was promulgated by the Biden Administration as part of a "suite" of regulations designed and intended to force the nation's coal-fired power plants offline.

The 2024 MATS Rule, if not repealed, will likely result in the retirement of coal-fired electric generating units ("EGUs") that are needed to maintain grid reliability in Commenter States and around the nation. And even if some coal-fired EGUs would be able to remain operational despite the excessive costs and technical flaws of the 2024 MATS Rule, those costs will be passed onto Commenter States and other consumers of electricity. The 2024 MATS Rule will not only cause direct harm to State Commenters' (and our nation's) economic interests, but it will also impede our ability to protect the public health and safety of our citizens by ensuring reliable access to power. And in exchange, the 2024 MATS Rule will provide (even under the Biden Administration's calculations) no discernible benefit to public health.

The 2024 MATS Rule was not the product of reasoned decisionmaking by a federal agency charged with balancing both the pros and cons of imposing new regulatory burdens. Rather, it appears to have been a product of the prior Administration's "whole-of-government" crusade to destroy the coal industry with any regulatory tool they could bend to that purpose. Commenter States therefore support the Proposed Rule for the following primary reasons:

- The 2024 MATS Rule's revised standard for filterable particulate matter (fPM) is not even close to being cost-effective. Even under the Biden Administration's calculations

(which grievously underestimate the actual costs of trying to comply with the rule), the 2024 MATS Rule is one of the least cost-effective rules that EPA has *ever* promulgated in terms of costs imposed per quantity of emission reduced.

- The 2024 MATS Rule's mandate that fPM compliance be demonstrated only with continuous emission monitoring systems ("PM CEMS"), rather than retaining the option to use quarterly stack testing, not only adds more costs to an already costly rule, but also, as a technical matter, it has not been demonstrated that PM CEMS would reliably work at the ultra-low emission levels mandated by the 2024 MATS Rule.

- The 2024 MATS Rule's revised mercury (Hg) standard for lignite-fired EGUs is not consistently achievable with available control technologies, due to the chemical variability of lignite when compared to other types of coals and a corresponding need for a larger compliance margin—factors the 2024 MATS Rule arbitrarily discounted. In claiming otherwise, the Biden Administration turned a blind eye to scientific realities that even the Obama Administration acknowledged.

- The 2024 MATS Rule is not "necessary" under Section 112(d)(6) of the Clean Air Act (codified at 42 U.S.C. § 7412(d)(6))—the key statutory requirement for EPA to meet when promulgating emission standards under that provision—because even the Biden Administration acknowledged that imposing the rule's severely reduced emission standards would result in no relevant and discernible public health benefit.

- The 2024 MATS Rule is not based on any "developments" in practices, processes, or control technologies that would warrant substantial revisions to the emission standards—another statutory requirement under Section 112(d)(6)—because the relevant control technologies have not materially changed since the last time EPA promulgated a MATS standard under the Obama Administration.

- The 2024 MATS Rule was pretextually issued by the Biden Administration, which claimed to promulgate the rule in order to protect public health from hazardous air pollutants when it was actually using rulemaking authority given to the agency for that purpose as part of a broader regulatory effort to force coal plants into retirement and reshape the national energy mix for climate change reasons, in contravention of the Supreme Court's decision in *West Virginia v. EPA*, 597 U.S. 697 (2022).

- The 2024 MATS Rule poses a clear and present danger to the reliability of our national power grids. Even if the Biden Administration's failure to consider the foreseeable risk that the rule would pose to our power grids at the time when the rule was promulgated could be justified (and it can't), the situation facing our nation has only grown more dire since then. Repeal of the 2024 MATS Rule is necessary to stop the bleeding and stabilize our national power grid so that it has any chance of meeting the staggering power demand growth anticipated for the upcoming decades.

Commenter States also request that, going forward, EPA build in time to consult with the relevant environmental regulatory agencies in the states prior to developing and promulgating

power plant emission standards. The Biden Administration all but ignored input from Commenting States when developing the 2024 MATS Rule, and it shows. The environmental regulatory agencies in the states have on the ground experience regulating the emissions of the power plants within their borders. That input could have been helpful to EPA. If the States had been meaningfully consulted when EPA was first considering the rule, rather than hearing about it at the same time as any other member of the public, they could have helped EPA understand why the standards it was considering were based on faulty assumptions. The States also could have helped EPA understand just how trivial, if any, the public health benefits likely to follow from such revisions would be. Years of regulatory efforts could have been put on a better track, and years of litigation could have potentially been avoided. But the EPA of the Biden Administration chose to not meaningfully consult with the environmental regulatory agencies in Commenter States before developing and promulgating the 2024 MATS Rule. We encourage EPA to do better going forward, and stand by to assist wherever requested.

I. THE PROPOSED RULE CORRECTLY RECOGNIZES THAT THE COSTS OF THE REVISED fPM STANDARD ARE NOT JUSTIFIED.[1]

Commenter States agree with EPA that the costs to implement the 2024 MATS Rule's 0.010/MMBtu fPM standard are unreasonably high, entirely inconsistent with EPA's prior Section 112(d)(6) technology review determinations, and justify the rule's repeal.[2]

When revising the MATS emission standards, EPA needs to account for a rule's costs, which "requires paying attention to the advantages *and* the disadvantages."[3] Indeed, the last time EPA promulgated a MATS Rule (under the Obama Administration), the Supreme Court expressly held that: "One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health benefits."[4] But the Biden Administration did precisely that.

Under the Biden EPA's own calculations, the 2024 MATS Rule imposes nearly $1 billion in costs.[5] In exchange, the Biden EPA was unable to quantify *any* improvement in public health or the environment from the further reduction in hazardous air pollutant (HAP) emissions mandated by the rule.[6] In an attempt to claim some "benefits" of the 2024 MATS Rule, the Biden EPA relied on purported ancillary benefits unrelated to any reduction in HAP emissions—like alleged climate change benefits.[7] But Section 112(d)(6) is not a climate change statute, and it only gives EPA authority to regulate specified HAP emissions. Pointing to alleged ancillary benefits,

[1] This section is provided in response to Question #1 (Should the revision of the fPM standard for existing coal-fired EGUs from 0.030 lb/MMBtu to 0.010 lb/MMBtu be repealed, as proposed, because the cost effectiveness of the revised fPM standard is inconsistent with the EPA's prior CAA section 112(d)(6) technology review determinations for other source categories?).

[2] 90 Fed.Reg. 25535, 25540 (Jun. 17, 2025).

[3] *Michigan v. EPA*, 576 U.S. 743, 750, 753, 756 (2015).

[4] *Id.* at 753.

[5] 89 Fed.Reg. at 38512.

[6] *Regulatory Impact Analysis for the Final National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review* (Apr. 2024) ("RIA for 2024 Rule") at 3-1, 4-1–4-2.

[7] 89 Fed.Reg. at 38512 (claiming $300 million in health benefits from reductions of non-HAP pollutants and $130 million in other climate benefits).

like climate change, to justify a revision to the MATS Rule was clearly improper and unlawful.[8] But even accounting for those alleged ancillary benefits, the 2024 MATS Rule *still* has a "negative net monetized benefit" of $440 million.[9]

Given that negative cost-benefit analysis (even under its own math), the Biden EPA attempted to pivot and justify the 2024 MATS Rule based on alleged "cost effectiveness"—*i.e.*, the cost per ton of HAP that would be removed by the rule.[10] But those cost-effectiveness calculations were even more problematic. For fPM emissions, by the Biden EPA's own math, the cost-effectiveness of the Rule is $10.5 million per ton of HAP removed,[11] and even the Biden EPA acknowledged that the "cost-effectiveness values…are higher than cost-effectiveness values that the EPA concluded were not cost-effective ... [in] prior rules."[12] That was a remarkable understatement; in fact, when compared to EPA's prior actions for the same pollutants from other industries, the 2024 MATS Rule appears to be among the least cost-effective rules *ever* enacted by EPA, especially considering the absence of any meaningful risk being remedied by the Rule. EPA has expressly *rejected* far smaller cost-effectiveness ratios for being excessive in other Section 112(d)(6) rulemakings.[13]

The Proposed Rule is thus correct that, even under the Biden Administration's math, "the cost effectiveness in the revised standard is inconsistent with the EPA's prior technology determinations,"[14] and warrants repeal of the 2024 MATS Rule.[15]

But the Biden Administration's math was also skewed, biased, and fundamentally flawed. Despite having access to all quarterly testing data for all power plants in the nation for the last eight years, EPA cherry-picked an extremely truncated data set on which to base its calculations. For most coal-fired EGUs in the country, the Biden EPA calculated fPM emission achievability by looking at only two quarters of available data (between 3.5% and 14% of available information).[16] The Biden EPA also made the deeply flawed assumption that if a power plant ever emitted below a standard then it was *consistently* capable of meeting that standard.[17] When confronted with how

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[8] *See* Transcript of Oral Argument at 59:19–60:5, *Michigan v. EPA*, Nos. 14-46 (Mar. 25, 2015) (Roberts, J. stating it would be improper for EPA to use its Section 112 authority to "get at the criteria pollutants that you otherwise would have to go through a much more difficult process to regulate. In other words, you can't regulate the criteria pollutants through the HAP program.").

[9] 89 Fed.Reg. 38503, 38511-12 (May 7, 2024).

[10] *Id*. at 38531-52.

[11] *Id*. at 38532-33.

[12] *Id*. at 38523.

[13] *See, e.g.*, 80 Fed.Reg. 75178, 75201 (Dec. 1, 2015) (petroleum refining) ($10 million/ton of non-Hg metal HAP)); 85 Fed.Reg. 42074, 42088 (Jul. 13, 2020) (Iron and Steel Manufacturing) ($7 million/ton of metal HAP)); 88 Fed.Reg. 11556, 11565 (Feb. 23, 2023) (lead-acid battery manufacturing) ($4.7million/ton of lead).

[14] 90 Fed.Reg .at 25541.

[15] Additional support for repealing the 2024 MATS Rule based on the abysmal cost-benefit and cost effectiveness of the rule (even under the Biden EPA's own math), can be found at pages 54-61 of the Final Opening Brief for Petitioners, Doc. 2089013 ("Petitioners' Opening Brief") and at pages 22-28 of the Final Reply Brief of Petitioners, Doc. 2089014 ("Petitioners' Reply Brief") in *State of North Dakota, et. al. v. EPA*, No. 24-1119 (D.C. Cir.), provided here as Attachments 1 and 2, respectively.

[16] *See* EPA, 2023 Technology Review for the Coal- and Oil-Fired EGU Source Category at 2 (Jan. 2023) ("2023 Tech. Review").

[17] *See* EPA, 2024 Update to the 2023 Technology Review for the Coal- and Oil-Fired EGU Source Category at 15 (Jan. 2024) ("2024 Tech. Memo").

absurd that assumption was and how problematic the truncated data set was for calculating actually achievable standards, the Biden EPA blithely responded doing a full analysis would be too "time-consuming."[18] But the "technical complexity of the analysis does not relieve the agency of the burden to consider all relevant factors." *Sierra Club v. Costle*, 657 F.2d 298, 333 (D.C. Cir. 1981). And those are only some highlights for how the analysis underlying the Biden EPA's claims about cost and achievability are riddled with errors and flawed assumptions from top to bottom, seeming to stretch bad numbers as far as the prior Administration possibly could.[19]

In short, the 2024 MATS Rule's new fPM emission standard should be repealed because the costs do not justify the (non-existent) benefits. Even under the Biden EPA's math, this was one of the least cost-effective standards EPA has *ever* in its history promulgated under Section 112. That alone warrants repeal. But the reality of those costs is even worse than the Biden EPA acknowledged. That the Biden EPA's calculations regarding cost were also based on assumptions and errors that are disconcerting in their magnitude only further supports repeal.

II. THE PROPOSED RULE PROVIDES A REASONED BASIS TO REINSTATE THE PRIOR fPM COMPLIANCE DEMONSTRATION OPTIONS.[20]

Commenter States agree with EPA's proposal to reinstate the previously accepted compliance demonstration options for fPM emissions for the reasons stated in the Proposed Rule.[21] As discussed *supra*, the Biden EPA's flawed cost-benefit analysis did not properly consider the costs of the 2024 MATS Rule, to include the costs of mandating that compliance with the fPM emission standard could only be demonstrated using PM CEMS.

The high cost of the 2024 MATS Rule's requirement that EGUs only use PM CEMS to demonstrate compliance with fPM emission standard is made clear by the cost savings of repealing the requirement—an estimated $2.8 million per year.[22] Repealing that requirement will allow EGUs to continue selecting between quarterly stack testing and PM CEMS so that they may use the most cost-effective monitoring option to demonstrate compliance with the MATS standards.

Moreover, the Biden EPA ignored technical comments explaining that PM CEMS is not a feasible or cost-effective way to demonstrate compliance when compared to the use of quarterly stack tests.[23] Commenters explained that current PM CEMS technology cannot accurately measure the 2024 MATS Rule's new fPM limits, explaining that it would be "virtually impossible" to obtain

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[18] *Id.* at 3.

[19] Additional support for repealing the 2024 MATS Rule's new fPM emission standard based on EPA's incorrect assumptions, skewed data sets, and mathematical errors can be found in Petitioners' Opening Brief (Attachment 1) at 65-73 and Petitioners' Reply Brief (Attachment 2) at 31-35.

[20] This section is provided in response to Question #3 (Should the quarterly stack testing and PM CPMS compliance demonstration options for the fPM standard be reinstated, as proposed, because other air pollution indicators can adequately inform operators of malfunctions and that the higher cost for PM CEMS do not outweigh the advantages of more efficient pollutant abatement and more transparency of EGU fPM emissions?).

[21] 90 Fed.Reg. at 25541.

[22] *Id*.

[23] *E.g.*, EPA-HQ-OAR-2018-0794-5973 (Comments of Ameren Missouri); EPA-HQ-OAR-2018-0794-5879 (Comments of American Public Power Ass'n); EPA-HQ-OAR-2018-0794-5971 (Comments of Arizona Public Service Company); EPA-HQ-OAR-2018-0794-5968 (Comments of Indiana Municipal Power Agency); EPA-HQ-OAR-2018-0794-5954 (Comments of Intermountain Power Service Corp.); EPA-HQ-OAR-2018-0794-5957 (Comments of Lignite Energy Council); EPA-HQ-OAR-2018-0794-5963 (Comments of Tri-State Generation) at 19.

accurate measurements from PM CEMS at such low concentrations.[24] Commenters also explained PM CEMS would fail correlation testing due to its technical limitations,[25] and that PM CEMS vendors themselves are unclear on whether the technology can meet the lower emissions levels mandated by the 2024 Rule.[26] The Biden EPA ignored these concerns and mandated the use of PM CEMS anyway.

The Biden EPA also underestimated the costs of mandating the use of PM CEMS while overestimating the costs of quarterly stack testing. The Biden EPA ignored evidence in the rulemaking record that the cost of one annually-required PM CEMS quality assurance audit "is equivalent to the cost of a single [fPM] quarterly test" and that PM CEMS would require an additional 662 labor hours over the course of four years when compared to quarterly stack testing and PM CPMS.[27] And the Biden EPA also ignored evidence that its stack test cost estimates were artificially inflated by EPA's failure to account for the fact that EGUs often coordinate stack tests with other required testing; for example, even if quarterly stack tests for fPM were eliminated, regulated EGUs would still be required to conduct stack tests to demonstrate compliance with the HCl limit.[28] While underestimating the costs of mandating PM CEMS to demonstrate fPM emission compliance, the Biden EPA also overestimated the costs of quarterly stack testing. Several commenters noted that EPA overestimated the annualized cost of one stack test by more than 50 percent when compared to cost estimates received from stack test vendors.[29] That the Biden EPA ignored substantial evidence in the record to justify the 2024 MATS Rule's PM CEMS mandate is another basis to repeal that element of the rule.

And the Biden EPA's clumsy attempt to justify its mandate for using PM CEMS by claiming that would allow operators to quickly identify potential issues ignores that other technologies identified in the Proposed Rule, such as electrostatic precipitators and bag leak detection systems, already allow operators to quickly identify potential performance issues.[30]

In short: repealing the PM CEMS mandate in the 2024 MATS Rule will allow EGUs to continue demonstrating compliance with the MATS emission standards using established methods and without imposing additional, unnecessary costs on EGUs and power consumers.

III. THE PROPOSED RULE CORRECTLY REPEALS THE REVISED MERCURY STANDARD DUE TO THE UNIQUE VARIABILITY OF LIGNITE.[31]

The Proposed Rule also correctly determines that, when mandating that the Hg emission levels from lignite-fired units must be the same as EGUs burning other forms of coal, the 2024

[24] EPA-HQ-OAR-2018-0794-6002 (Comments of Sandy Creek Services, LLC) at 7.
[25] Comments of Tri-State Generation at 12.
[26] EPA-HQ-OAR-2018-0794-5979 (Comments of Small Business Administration) at 4.
[27] Comments of American Public Power Ass'n at 24, 27.
[28] *See* Comments of Arizona Public Service Company at 8; Comments of Indiana Municipal Power Agency at 6.
[29] *See* Comments of Arizona Public Service Company at 7-8; Comments of Lignite Energy Council at 12; Comments of Tri-State Generation at 19.
[30] *Id*.
[31] This section is provided in response to Question #6 (Should the revision of the Hg standard for lignite-fired EGUs from 4.0 lb/TBtu to 1.2 lb/TBtu be repealed, as proposed, because of insufficient data demonstrating the standard can be met by lignite-fired EGUs with a range of boiler types and variable fuel composition?).

MATS Rule failed to adequately consider the realties of lignite's unique chemical composition and the available control technologies for Hg emissions.[32]

The 2024 MATS Rule did not demonstrate that the revised mercury standard is achievable for all lignite-fired EGUs, as it did not take into account "the wide-ranging and highly variable Hg content of the various lignite fuels."[33] The combination of low halogen content and higher sulfur content in lignite coal makes it more variable than other coals. And that chemical variability makes mercury removal from lignite-fired EGU emissions substantially more difficult than for EGUs that use bituminous or subbituminous coal, which may have either low halogen or high sulfur content, but generally not both.[34]

Furthermore, in order to consistently achieve a designated emission level, lignite-fired EGUs must account for a higher Hg compliance margin in order to account for the increased variability of lignite.[35] In other words, lignite-fired EGUs must operate at an even lower target than the mandated emission standard in order to ensure that Hg emissions do not ever exceed that threshold. The 2024 MATS Rule failed to account for that necessary compliance margin when mandating that lignite-fired EGUs meet the same emission standard as other types of coal.[36]

Recognition of the chemical differences and variability of lignite coal with regard to Hg composition is crucial to setting an emission level that is actually intended to be consistently achievable. Even the Obama Administration recognized that basic, scientific reality.[37] The Biden Administration's willful ignorance of those differences when mandating that lignite-fired EGUs achieve the same Hg emission standard as EGUs firing other types of coal fully supports the repeal of that aspect of the 2024 MATS Rule.

Furthermore, in addition to the reasons identified by EPA in the Proposed Rule, Commenter States encourage EPA to repeal the revised mercury standard due to the unsupported assumption in the 2024 MATS Rule that lignite-fired units can just inject more brominated powdered activated carbon to achieve sufficient reductions to meet the revised standard. The 2024 MATS Rule asserted that mercury controls on lignite-fired units can just be "dialed up or down to achieve a desired Hg emission rate."[38] That was hogwash. The Biden EPA disregarded and downplayed technical evidence explaining that available control technologies for Hg emissions have severely diminished returns—a leveling off effect—that means lignite-fired EGUs cannot simply "dial up" the level of injected sorbent to meet the 2024 MATS Rule's new emission standard.[39] In an attempt to sidestep that *fundamental* flaw in its analysis, the Biden EPA pointed to a single memo that was published *before* the Obama-era MATS rule, which in turn relied on a now-fifteen-year-old trade publication.[40] But the Biden EPA offered no explanation for how a memo that supported the Obama Administration's recognition of the necessity for treating Hg emissions from lignite-fired EGUs

[32] 90 Fed.Reg. at 25543-44.
[33] *Id*. at 25543.
[34] *See* Comments of Lignite Energy Council at 6-7
[35] *Id*. at 7.
[36] 89 Fed.Reg. at 38540-41; *see also* Comments of Lignite Energy Council at 6-7.
[37] *See* 77 Fed.Reg. 9304, 9393 (Feb. 16, 2012).
[38] 89 Fed.Reg. at 38540.
[39] *Cf.* 2024 Tech. Memo at 34.
[40] 89 Fed.Reg. at 38547; 2024 Tech. Memo. at 34 (citing S. Sjostrom et al., *Activated Carbon Injection for Mercury Control: Overview, Fuel*, at 1320-22 (2010)).

differently now supported treating them the same. This analytical assumption—that Hg controls can simply be "dialed up" to achieve the new emission standard by injecting more sorbent—is the essential cornerstone for the Biden EPA's justification for revising the Hg standard on lignite-fired units. But that cornerstone was built on, at best, a willful ignorance of reality, and it provides another basis for repealing the 2024 MATS Rule's revisions to the Hg standard.

Accordingly, Commenter States support EPA's repeal of the unsupported and unachievable mercury standards mandated by the 2024 MATS Rule for lignite-fired EGUs.[41]

IV. THE 2024 MATS RULE SHOULD ALSO BE REPEALED BECAUSE IT WAS NOT "NECESSARY" UNDER CAA SECTION 112(D)(6).[42]

Commenter States agree with EPA's proposal to find that the changes in the 2024 MATS Rule were not "necessary" under Section 112(d)(6).[43] In addition to all of its faulty analysis, reliance on skewed data, and misrepresentations discussed *supra*, the Biden EPA acted contrary to its statutory authority in promulgating the 2024 MATS Rule.

Any revision to an emission standard under Section 112(d)(6) must be "necessary."[44] However, nowhere in the 2024 MATS Rule or the corresponding administrative record did the Biden EPA even pretend to articulate how or why the 2024 MATS Rule was "necessary" under Section 112(d)(6), which independently supports repealing the 2024 MATS Rule.

But even if the Biden EPA had attempted to articulate that the 2024 MATS Rule was "necessary," no plausible construction of that term could justify the Biden EPA's promulgation of the rule. Because the simple fact is that the public health risks from HAP emissions from coal-fired EGUs are already so low that the 2024 MATS Rule's mandate for lower HAP emissions will achieve *no demonstrable public health benefits* from that reduction in HAP emissions.

Simply stated: a mandate that power plants further reduce HAP emissions is not reasonable—let alone "necessary"—when that mandated reduction in HAP emissions will not have any discernible public health benefit.

The Biden EPA acknowledged that there are no residual risks to public health or the environment remaining after implementation of the original, Obama-era MATS rule.[45] Exposure from the relevant HAP emissions is already so low that the Biden EPA noted a "lack of quantifiable

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[41] Additional support for repealing the revised mercury standard based on the Biden EPA's failure to understand (or accurately discuss) the characteristics of lignite coal and available Hg control technologies is provided in Petitioners' Opening Brief (Attachment 1) at pages 73-82 and Petitioners' Reply Brief (Attachment 2) at 35-39.

[42] This section is provided in response to Question #8 (Should the Agency consider whether, when weighing the costs associated with developments under a CA section 112(d)(6) technology review, there would be any meaningful risk reduction from reductions in HAP emissions based on potential revisions to emission standards resulting from those developments?).

[43] 90 Fed.Reg. at 25544.

[44] 42 U.S.C. § 7412(d)(6) (The Administrator shall review, and revise *as necessary* (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.) (emphasis added).

[45] 88 Fed.Reg. at 24866; *see also id.* at 24895 ("the residual risk assessment showed all modeled exposures to HAP to be below thresholds for public health concern").

risks" from power plants' mercury emissions.[46] That's true even when abstracted to the hypothetical of a person that would be "most exposed" to such emissions: a hypothetical person who spent his entire life subsistence fishing on the riverbank outside a coal-fired EGU. Even assuming such a person existed, the likelihood of him having an adverse health effect like cancer at any point in his life due to the EGU's HAP emissions ranges from 0.002 to 0.344 in one million—which is orders of magnitude *below* Congress' threshold for deregulating the EGU source category entirely.[47] In other words, the Obama-era MATS Rule achieved its goal: HAP emissions from American coal-fired EGUs are already so low that they do not pose a meaningful threat to human health and safety. And it's not like the 2024 MATS Rule made an already low risk lower. The Biden EPA didn't even pretend to quantify or demonstrate that mandating a further reduction in already-miniscule HAP emissions would lead to any improvement in public health.

The 2024 MATS Rule did not impart any discernible public health benefits from further mandating a reduction in HAP emissions. And that's because the 2024 MATS Rule wasn't about protecting the public from the adverse health effects of HAP emissions. It was about the Biden EPA trying to use another tool in its regulatory toolkit to target the coal industry with retirement-inducing costs for climate change reasons, despite EPA's Section 112(d)(6) rulemaking authority being statutorily limited to protecting public health from HAP emissions.

While the Biden EPA characterized Section 112(d)(6) as a technology-based statute that reflects Congress's goal to reduce emissions as much as "achievable,"[48] the text of Section 112(d)(6) uses the word "necessary," not the word "achievable." Where Congress wanted EPA to reduce emissions as much as "achievable," it clearly said so in the statutory language.[49] Section 112(d)(6)'s deliberate use of the term "necessary" must be given meaning.[50]

The word "necessary" "has always been recognized as a word to be harmonized with its context."[51] Something may be "necessary" if it is "absolutely needed,"[52] or "essential, indispensable, or requisite."[53] Sometimes "necessary" implies a looser fit, such as "convenient" or "useful."[54] But however tight or loose, determining whether an action is "necessary" requires examining the statute's "desired goal."[55] And statutory context makes clear that the "desired goal" for mandating HAP emission levels under Section 112(d)(6) is protecting public health.

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[46] *Id*. at 4-5.
[47] Residual Risk Analysis, Appx. 10, Tbls. 1, 2a; 42 U.S.C. § 7412(c)(9)(B)(i) (providing that EPA may delist a category when none of its sources emits carcinogens at a level that "may cause a lifetime risk of cancer greater than one in one million" to the "most exposed" individual).
[48] 89 Fed.Reg. at 38531.
[49] For instance, in regulating power plants under the neighboring Section 111 of the CAA, Congress directed EPA to "revise" an emission standard for new plants if the existing limit "no longer reflects the greatest degree of emission limitation achievable." 42 U.S.C. § 7411(g)(4)(B).
[50] *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 316 (2014) ("[W]e, and EPA, must do our best, bearing in mind the "'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'") (citation omitted).
[51] *Armour & Co. v. Wantock*, 323 U.S. 126, 129-30 (1944).
[52] *Merriam Webster's Collegiate Dictionary* (10th ed. 1994).
[53] *Random House Collegiate Dictionary* (rev. ed. 1980).
[54] *McCulloch v. Maryland*, 17 U.S. 316, 421 (1819).
[55] *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 423 (D.C. Cir. 2000).

The clear purpose of Section 112 is to regulate HAP emissions to protect the public from adverse effects of those HAP emissions. *See, e.g.*, 42 U.S.C. §§ 7412(b)(3)(B), (C) (substances shall be included or deleted from regulation under Section 112 based on "adverse effects to human health or adverse environmental effects").

And that purpose is especially clear for power plants, which are treated "differently from other sources for purposes of the hazardous-air-pollutants program."[56] Before EPA could regulate power plants under Section 112, Congress required it to find that "such regulation is appropriate and necessary" after considering the results of "a study of the *hazards to public health* reasonably anticipated to occur as a result of [their] emissions."[57] And given that Congress permitted EPA to regulate power plants only to address hazards to public health,[58] it follows that Congress sought for EPA to again use public-health benefits as the benchmark when deciding whether revisions to power plant regulations are "necessary" under Section 112(d)(6).[59]

In short: when asking whether revisions are "necessary" within the meaning of Section 112(d)(6), the inquiry must be whether the revisions are "necessary" *for protecting public health*. It is not "rational," much less "necessary," to impose a regulation that would yield no discernible benefits towards the statutory goal of protecting public health from HAP emissions.[60, 61]

V. THE 2024 MATS RULE SHOULD ALSO BE REPEALED BECAUSE THERE WERE NO "DEVELOPMENTS" UNDER SECTION 112(D)(6).[62]

In addition to the reasons identified in the Proposed Rule, Commenter States also support the repeal of the 2024 MATS Rule because there were no "developments" to warrant revising the 2012 MATS Rule—another statutory requirement for rulemaking under Section 112(d)(6).[63]

Since promulgating the original rule in 2012, EPA has twice determined there have not been new practices, processes, or control technologies that would constitute "developments" warranting further revision of the MATS rule—first in 2020 and again in 2023.[64]

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[56] *Michigan*, 576 U.S. at 751.
[57] 42 U.S.C. § 7412(n)(1)(A) (emphasis added).
[58] *See* 42 U.S.C. § 7412(n)(1)(A).
[59] *See Rowan Cos., Inc. v. U.S.*, 452 U.S. 247, 255 (1981) (consistent use of a term in a statutory scheme is "strong evidence" Congress intended the term to mean the same thing).
[60] *See Michigan*, 576 U.S. at 753 ("One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health benefits.")
[61] Additional support for why the 2024 MATS Rule was not "necessary" under Section 112(d)(6) is provided in Petitioners' Opening Brief (Attachment 1) at 32-45 and Petitioners' Reply Brief (Attachment 2) at 6-16.
[62] This section is provided in response to Question #2 (Are there other cost-effective and achievable fPM limits for existing coal-fired EGUs that are based on developments in practices, processes, and control technologies that the EPA should consider as an alternative to repealing to 0.010 lb/MMBtu standard?) and Question #7 (Are there other achievable and cost-effective Hg standards for lignite-fired EGUs that are based on developments in practices, processes, and control technologies that the EPA should consider as an alternative to repealing the 1.2/TBtu standard?).
[63] *See* 42 U.S.C. § 7412(d)(6) (directing agency to "review, and revise [HAP emission standards] as necessary (taking into account *developments* in practices, processes, and control technologies) (emphasis added).
[64] *See* 85 Fed.Reg. 31286, 31314 (May 22, 2020); 88 Fed.Reg. 24854, 24868 (Apr. 24, 2023) ("our review of fPM compliance data for coal-fired EGUs indicated no new practices, processes, or control technologies …").

In spite of those findings, the Biden EPA reversed course and concluded that the fact that EGUs have been meeting current standards at lower costs than estimated in 2012 was a "development." Specifically, in the proposal for the 2024 MATS Rule, the Biden EPA stated:

> Although "review of fPM compliance data for coal-fired EGUs indicated no new practices, processes, or control technologies for non-Hg metal HAP, it revealed two important developments … First, it revealed that most existing coal-fired EGUs are reporting fPM well below the current fPM emission limit … Second, it revealed that the fleet is achieving these performance levels at lower costs than assumed during promulgation of the original MATS fPM emission limit."[65]

And in the 2024 MATS Rule, the Biden EPA similarly stated:

> "[O]ur judgments regarding developments in fPM control technology … largely reflect that the fleet was reporting fPM emission rates well below the current standard and with lower costs than estimated during promulgation of the 2012 MATS Final Rule."[66]

These are not "developments" under Section 112(d)(6).

The Biden EPA's claim otherwise was a sharp departure from past practice. EPA has previously defined Section 112(d)(6) "developments" as: "(1) Any add-on control technology or other equipment that was not identified and considered during development of the [prior standard]; (2) Any improvements in add-on control technology or other equipment (that were identified and considered during development of the [prior standard]) that could result in significant additional emissions reductions; (3) Any work practice or operational procedure that was not identified or considered during development of the [prior standard]; and (4) Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the [prior standard]."[67] Nothing in the record for the 2024 MATS Rule falls under any of those listed factors. But even setting aside the Biden EPA's about-face on the meaning of "developments," its construction of the term does not hold water.

For one, the fact that coal-fired EGUs met the Obama-era MATS standards is not a "development" warranting further ratcheting down of the standard. Emission sources must meet HAP emission standards continuously—100% of the time. In order to avoid exceeding those emission limits even momentarily, plants must operate below the applicable standard, in order to account for variability in fuel source and typical fluctuations in emission levels.[68] Given that reality, if meeting an emission standard with a compliance margin qualified as a "development," then EPA could tighten HAP emissions standards in perpetuity until the regulated source could no longer comply with the standard 100% of the time. This ever-tightening squeeze is not what

[65] 88 Fed.Reg. at 24868.
[66] *Id*. at 38519.
[67] 76 Fed.Reg. 81328, 81341 (Dec. 27, 2011).
[68] *See* 77 Fed.Reg. 58220, 58231 (Sept. 19, 2012).

Congress intended, and even EPA has previously recognized that Section 112(d)(6) puts meaningful constraints on its ability to continuously ratchet down HAP emission standards.[69]

For another, the same control technologies underlying the emission standards in the original 2012 MATS Rule remain the primary technologies used to control emissions today. For example, brominated ACI was available for control of mercury emissions under the original MATS rule in 2012, and is the same technology used to control mercury emissions today.[70] Similarly, electrostatic precipitators and fabric filters are still the primary devices for controlling fPM, and the performance of those control devices is the same now as it was in 2012.[71] And the Biden EPA's belated gesticulation towards increased durability in filter-bag material for baghouse controls[72] cannot constitute a "development" for ratcheting down the standards because, in setting the 2012 HAP emission standard, the EPA of the Obama Administration already presumed that *no* malfunctions will occur (i.e., that the filter bags will never break).[73]

For similar reasons, the allegation that EGUs are able to meet emission standards at lower costs than EPA estimated when it promulgated the 2012 MATS Rule does not constitute a "development" under Section 112(d)(6). As noted above, EPA has recognized that "developments" for purposes of Section 112(d)(6) must be related to technology, procedures, or processes.[74] Indeed, the "core requirement" for revising emission standards under Section 112(d)(6) is for EPA to identify technological developments.[75] Alleged cost-effective compliance using long-existent technologies does not meet any of those criteria, and it is not a "development" that would support the Rule's dramatic emission reductions here.

In sum, the lack of any meaningful "development" in "practices, processes, and control technologies" that would warrant dramatically reducing the MATS standards is another, independent basis supporting repeal of the 2024 MATS Rule.[76]

VI. THE 2024 MATS RULE SHOULD ALSO BE REPEALED BECAUSE ITS PROMULGATION BY THE BIDEN ADMINISTRATION WAS PRETEXTUAL.

Commenter States submit that the Biden Administration's pretextual justification for issuing the 2024 MATS Rule also independently supports its repeal.

Federal agencies must "offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public."[77] But when "the evidence tells a story that

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[69] 70 Fed.Reg. 19992, 20008 (Apr. 15, 2005) ("We reiterate that there is no indication that Congress intended for section 112(d)(6) to inexorably force existing source standards progressively lower and lower in each successive review cycle…").

[70] *See* 89 Fed.Reg. at 38547; 76 Fed.Reg. 24976, 25014 (May 3, 2011) (both iterations of the MATS Rule identifying and defining dry sorbent injection as ACI, including brominated ACI).

[71] 2023 Tech. Review at 8-9.

[72] 89 Fed.Reg. at 38530.

[73] *See* 77 Fed.Reg. at 9393.

[74] 76 Fed.Reg. at 81341.

[75] *NRDC v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008) (Section 112(d)(6) requires "the Administrator to 'review, and revise as necessary' the *technology-based* standards in light of *technological developments*") (emphasis added).

[76] Additional support for why there were no "developments" justifying the 2024 MATS Rule is provided in Petitioners' Opening Brief at (Attachment 1) 45-54 and Petitioners' Reply Brief (Attachment 2) at 16-21.

[77] *Dep't of Commerce v. New York*, 588 U.S. 752, 784-85 (2019).

does not match the explanation," the mismatch indicates the agency's rationale is "contrived," rendering the rule arbitrary and capricious.[78] Because the pretext analysis stems from the requirement that an agency disclose the basis of its action, it does not turn on whether the agency ultimately has the authority to do what it purported to do.[79] Instead, what matters for the pretext analysis is whether the justification offered by the agency matches the reality of its actions.

EPA stated that it promulgated the 2024 MATS Rule to protect public health from the adverse effects of HAP emissions (after all, that is the only basis it has for exercising rulemaking authority under Section 112).[80] However, as discussed *supra*, the rule actually had no discernible public health benefit from its mandated reduction in HAP emissions.

Instead, available evidence strongly indicates that the Biden EPA promulgated the 2024 MATS Rule as one part of a coordinated "suite" of regulations that were designed to impose retirement-inducing cost on coal-fired power plants not because of their HAP emissions, but because of their CO_2 emissions and the Biden Administration's "all-of-government" crusade against climate change. *Contra West Virginia*, 597 U.S. at 735 ("not plausible" that EPA was empowered to "force a nationwide transition away from the use of coal to generate electricity").

The Administrator of the Biden EPA gave repeated interviews where he stated, following the Supreme Court's decision in *West Virginia v. EPA*, that the agency was going to use "bread-and-butter regulations—specifically mentioning mercury—in order to "decarbonize" the power plant sector and reduce "greenhouse gas emissions."[81] He also publicly stated that the EPA of the Biden Administration was going to "couple" "health-based regulation" (like MATS) with the regulation of "climate pollution" (which has nothing to do with MATS), in order to force the power sector to "make the right investment decisions."[82] Those statements were not one-offs; they reflect a repeated refrain of the Biden EPA's rulemaking strategy.[83]

Those public comments match internal documents produced through FOIA indicating that the Biden EPA planned to revise the MATS Rule as a means of reducing power plant emissions for climate change reasons. For example, in February 2021, EPA prepared a presentation for the White House *Climate* Advisor. That document evidences the Biden EPA's intent to use its regulatory authority under various programs, including the MATS Rule, for reducing power plant emissions to implement the Administration's climate agenda—indeed, one slide briefed to the White House *Climate* Advisor expressly discusses the "Air Toxics Standards (e.g., MATS Rule)."[84]

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[78] *Id*. at 784.
[79] *Id*. at 780.
[80] *See* 89 Fed.Reg. 38509-38510.
[81] *See* White House, *Press Gaggle by Principal Deputy Press Secretary Karine Jean-Pierre & Env't Prot. Agency Adm'r Michael Regan* (Feb. 17, 2022), available at https://tinyurl.com/bddpr22j.
[82] *See* Transcript, *PBS interview with Michael S. Regan* (June 30, 2022), https://tinyurl.com/4vsn3mcr.
[83] *See also, e.g.*, Geman, *EPA floats path on electricity CO2 emissions—with an asterisk*, Axios (Mar. 11, 2022), available at https://tinyurl.com/yud7weey (reporting that Administrator Regan stated EPA would implement a "suite of rules" with the "co-benefit" of reducing carbon dioxide emissions).
[84] *See* presentation entitled: "Power Sector Strategy: Climate, Public Health, Environmental Justice, Briefing for Gina McCarthy and Ali Zaidi" (Feb. 4, 2021), available at *North Dakota et al. v. EPA*, No. 24-1119 (D.C. Cir.), Joint Appendix (Doc. 2088465) at 1971-1981.

Pretext explains why the Biden EPA used its authority to regulate HAP emissions in order to impose tremendous costs on coal-firing power plants with no relevant public health benefit to show from mandating a further reduction in HAP emissions. Because it was never about protecting the public from HAPs; it was about using "bread-and-butter" tools, like the ability to regulate HAPs, in order to reduce CO_2 emissions by forcing the retirement of coal-fired power plants. Indeed, the true purpose for EPA's "suite" of rules targeting coal-fired plants was recognized around the world.[85] It was disingenuous. It was wrong. And it was unlawful.[86]

The Biden Administration's pretextual basis for promulgating the 2024 MATS Rule thus provides another, independent basis for its repeal.[87]

VII. THE 2024 MATS RULE SHOULD ALSO BE REPEALED BECAUSE IT IS A CLEAR AND PRESENT DANGER TO GRID RELIABILITY.

Commenter States further support the Proposed Rule as it will prevent the detrimental impacts that the 2024 MATS Rule will have on our national power grid reliability. Even if the Biden EPA's failure to adequately consider the impact that the rule would have on the grids when promulgating the rule in 2024 could be excused (and it can't), it has now become clear in 2025 that the reliability of our national power grids would be seriously jeopardized by the rule.

As an initial matter, the Biden EPA's cursory proclamation that the 2024 MATS Rule would have no impact on the power grid was wrong. The 2024 MATS Rule lacked any long-term assessment of grid reliability and EPA did not consult with the entities with expertise in the power grid, as those entities would have made clear to the Biden EPA that the 2024 MATS Rule would have detrimental effects on the nation's power grids.[88] "EPA has no expertise on grid reliability."[89] The Biden EPA's perfunctory conclusions that the significant costs this Rule imposes on coal-fired EGUs will not cause *any* premature retirements and have *no* negative impacts to the reliability of the nation's power grids do not reflect the reasoned analysis that the Clean Air Act requires.[90] And the Biden EPA's conclusory statements that commenters proffered "no credible information" that the

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[85] *E.g.*, Milman, *New US climate rules for pollution cuts 'probably terminal' for coal-fired plants*, Guardian (May 2, 2024), available at https://tinyurl.com/ykmb9xvn.

[86] The State of North Dakota also has a FOIA lawsuit against EPA that has been ongoing since April of 2024 seeking internal EPA documents likely to evidence the pretext underlying the rulemaking of the prior Administration. *See Wrigley v. EPA*, No. 1:24-cv-00129 (D.N.D.). The materials released by EPA in that litigation have thus far been excessively redacted. If this Administration wants to further understand and bring to light the motivations of the prior Administration's EPA when it promulgated a "suite" of rules designed to kill the American coal industry, voluntarily un-redacting the documents sought in that FOIA lawsuit may be an action to consider.

[87] Additional support for repealing ther 2024 MATS Rule because it was pretextually promulgated is provided in Petitioners' Opening Brief (Attachment 1) at 98-105 and Petitioners' Reply Brief (Attachment 2) at 48-51.

[88] *E.g.*, Rainbow Energy Center Cmts., EPA-HQ-OAR-2018-0794-5990, at 4; Minnkota Power Coop. Inc. Cmts., EPA-HQ-OAR-2018-0794-5978, at 2-3; Power Generators Air Coalition Cmts., EPA-HQ-OAR-2018-0794-5994, at 12, Cichanowicz Report at 39-44; National Rural Electric Coop. Ass'n. Cmts., EPA-HQ-OAR-2018-0794-5956, at 5-6; Nat'l. Mining Ass'n. Cmts., EPA-HQ-OAR-2018-0794-5986, at 17-27.

[89] *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016).

[90] 89 Fed.Reg. at 38555-56; *cf. Small Ref. Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 535 (D.C. Cir. 1983) (The "agency must 'explain the assumptions and methodology used in preparing [a] model' and if the methodology is challenged, must provide a 'complete analytic defense.'") (citation omitted).

2024 MATS Rule would lead to premature retirements and "threaten resource adequacy or otherwise degrade electric system reliability,"[91] simply ignores the substantial evidence in the record.[92]

Furthermore, specifically in the context of promulgating MATS rules against power plants, there is every reason to distrust the assurances from the Biden EPA that the 2024 MATS Rule will not have any impact whatsoever on power grid reliability. When the Obama Administration promulgated the 2012 MATS Rule, the Obama EPA assured the country that it would only cause 5,000 MW of generation to go offline.[93] But they were wrong; the number ended up being closer to a staggering 60,000 MW.[94] Nothing in the administrative record for the 2024 MATS Rule suggests the Biden EPA learned anything from or improved upon the Obama Administration's abject failure to understand the impact that its rulemakings would have on our nation's power grids.

The Biden EPA's failure to adequately consider and address the 2024 MATS Rule's foreseeably significant impacts on the national power grids rendered it arbitrary and capricious, and by itself provides another independent basis to support its repeal.[95]

But even setting aside the Biden EPA's arbitrary and capricious failure to consider the foreseeable impacts on the national power grids when the rule was promulgated, the situation and projections facing our national power grids here-and-now also demand repeal of the rule.

A recent Department of Energy ("DOE") study published last month reinforces what Commenter States and grid operators told the Biden EPA when it proposed revisions to the MATS Rule in 2023. As DOE summarized, "[t]he magnitude and speed of projected load growth cannot be met with existing approaches to load addition and grid management."[96] To state it even more bluntly: "[t]he status quo of more generation retirements and less dependable replacement generation is [not] consistent with … ensuring affordable energy for all Americans, nor with continued grid reliability …. Absent intervention, it is impossible for the nation's bulk power system to meet the AI growth requirements while maintaining a reliable power grid."[97]

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[91] 89 Fed.Reg. at 38526.

[92] *E.g.*, Rainbow Energy Center Cmts., EPA-HQ-OAR-2018-0794-5990, at 4; Minnkota Power Coop. Inc. Cmts., EPA-HQ-OAR-2018-0794-5978, at 2-3; Power Generators Air Coalition Cmts., EPA-HQ-OAR-2018-0794-5994, at 12, Cichanowicz Report at 39-44; National Rural Electric Coop. Ass'n. Cmts., EPA-HQ-OAR-2018-0794-5956, at 5-6; Nat'l. Mining Ass'n. Cmts., EPA-HQ-OAR-2018-0794-5986, at 17-27.

[93] 77 Fed.Reg. at 9407.

[94] *See* Comments of Nat'l Mining Ass'n. at 2, n.4; *see also, e.g.*, U.S. Energy Info. Admin., *Planned coal-fired power plant retirements continue to increase* (Mar. 20, 2014), bit.ly/4dbYwfM (between 2012 and 2020, "about 60 gigawatts of coal-fired capacity is projected to retire … assum[ing] implementation of the MATS standards"); Pratson et. al., Fuel Prices, *Emission Standards, and Generation Costs for Coal v. Natural Gas Power Plants*, Am. Chem. Soc'y, Env'l Sci. & Tech., 4929 (Mar. 2013), bit.ly/3w7yLN2 (most coal-fired EGU retirements in the wake of the original MATS Rule were due to "stronger regulations," not unrelated market forces).

[95] Additional support for repealing the 2024 MATS Rule based on the Biden EPA's arbitrary and capricious failure to adequately consider and address the threats that rules posed to our national power grids can be found in Petitioners' Opening Brief (Attachment 1) at 61-65 and Petitioners' Reply Brief (Attachment 2) at 28-30.

[96] U.S. Dep't of Energy, Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid at 1 (Jul. 2025), available at https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29_0.pdf (last accessed July 16, 2025) ("DOE Report"). The full DOE report is included as Attachment 3.

[97] *Id.*

The Department of Energy estimates that even with *no* plant closures by 2030, several power grids in the United States are projected to have hundreds of hours per year when the power system's hourly demand will exceed available generating capacity (referred to as a Loss of Load Hours ("LOLH") in the map below).[98]

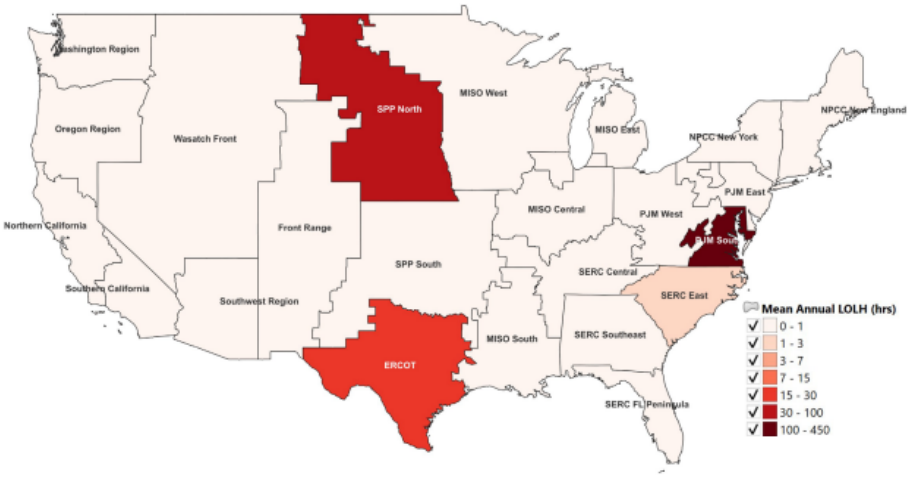

Figure 2. Mean Annual LOLH by Region (2030) – No Plant Closures

And the Department of Energy is not the only entity raising alarm. The map below from the North American Electric Reliability Corporation's Long-Term Reliability Assessment, indicates that the effect of already announced EGU retirements on projected energy reserve margins in the United States and Canada shows that those margins fall below the "amount of reserve capacity in the system above the forecasted peak demand that is needed to ensure sufficient supply to meet peak loads."[99] In other words, even without the 2024 MATS Rule triggering additional EGU retirements, in 10 years nearly every system in the United States and Canada will not have enough reserve capacity to meet peak demand.

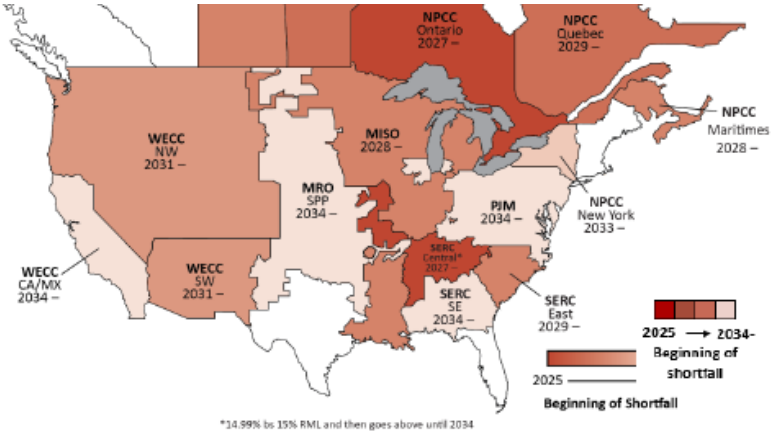

Figure 2: Projected Reserve Margin Shortfall Areas with Announced Generator Retirements (Corrected July 2025)

[98] DOE Report (Attachment 3) at 6.

[99] N. Am. Electric Reliability Corp., 2024 Long Term Reliability Assessment at 8 (updated Jul. 15, 2025), available at https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf

This vulnerability is exacerbated on a regional scale. For example, the Midcontinent Independent System Operator (MISO) has publicly identified a number of "immediate and serious challenges" to grid reliability in the MISO region. MISO specifically notes that "[m]any dispatchable resources that provide critical reliability attributes [(like coal)] are retiring prematurely due to environmental regulations," and that their replacement with weather-dependent resources is a key risk to regional grid reliability.[100] Similarly, a study commissioned by the North Dakota Transmission Authority found that the retirement of even one of North Dakota's lignite-fired EGUs due to the 2024 MATS Rule would risk causing the entire MISO grid to experience black-outs, resulting in economic damages ranging from $29 million to over $1 billion.[101]

Numerous operators of coal-fired power plants have been clear that the technical fallacies and exorbitant costs of the 2024 MATS Rule will likely cause coal-fired EGUs into premature retirement.[102] Forcing such retirements was no doubt the intent and purpose behind the Biden Administration promulgating the rule as one part of its "suite" of regulations designed to target the industry with crippling new costs in order to force market participants into making what the prior Administration decreed to be the "right" investment decisions. But given the looming grid reliability crisis that our nation is facing, it makes no sense to continue down the irresponsible and foolish path of forcing coal-fired power plants offline.[103]

In short: ensuring the reliability of our national power grids provides yet another independent basis for repealing the Biden Administration's 2024 MATS Rule.

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We appreciate the opportunity to comment on the Proposed Rule and encourage EPA to finalize its repeal of the ill-advised (and unlawfully issued) 2024 MATS Rule.

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[100] Midcontinent Independent System Operator, MISO's Response to the Reliability Imperative at 1-2, available at https://www.misoenergy.org/meet-miso/MISO_Strategy/reliability-imperative/ (last accessed July 9, 2025).

[101] *See* North Dakota Industrial Commission and North Dakota Transmission Authority, Analysis of Proposed EPA MATS Residual Risk and Technology Review and Potential Effects on Grid Reliability in North Dakota at 1, 31-32, 48 (Apr. 3, 2024). The full NDTA study is included as Attachment 4.

[102] *E.g.*, Rainbow Energy Center Cmts., EPA-HQ-OAR-2018-0794-5990, at 4; Minnkota Power Coop. Inc. Cmts., EPA-HQ-OAR-2018-0794-5978, at 2-3; Power Generators Air Coalition Cmts., EPA-HQ-OAR-2018-0794-5994, at 12, Cichanowicz Report at 39-44; National Rural Electric Coop. Ass'n. Cmts., EPA-HQ-OAR-2018-0794-5956, at 5-6; Nat'l. Mining Ass'n. Cmts., EPA-HQ-OAR-2018-0794-5986, at 17-27.

[103] Indeed, failing to revise or repeal the 2024 MATS Rule when confronted with such evidence about its significantly detrimental and foreseeable impacts on grid reliability would risk a determination that such a failure to act is itself arbitrary and capricious because it runs "counter to the evidence before the agency." *Motor Veh. Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983).

Sincerely,

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