

February 6, 2025

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

**Re: Comments of the Power Generators Air Coalition on the U.S. Environmental Protection Agency’s Proposed Rule, “Regional Haze Third Implementation Period; Extension of the State Implementation Plan Due Date,” Docket ID No. EPA-HQ-OAR-2023-0262; 89 Fed. Reg. 104,471 (Dec. 23, 2024)**

Dear Administrator Zeldin:

The Power Generators Air Coalition (“PGen”) appreciates the opportunity to comment on the U.S. Environmental Protection Agency’s (“EPA”) proposed rule, entitled “Regional Haze Third Implementation Period; Extension of the State Implementation Plan Due Date” (“Proposed Rule”).<sup>1</sup>

On December 23, 2024, EPA proposed to extend the deadline for regional haze state implementation plans (“SIPs”) for the regional haze program’s third implementation period from July 31, 2028, to a revised due date of July 31, 2031.<sup>2</sup> The third implementation period will continue to span the 2028 to 2038 timeframe, and States are to remain focused on emissions reduction measures to achieve reasonable progress by 2038, as required under the current rule.<sup>3</sup> The Proposed Rule furthermore would not extend the deadline for any future regional haze SIPs.<sup>4</sup> PGen supports EPA’s proposed extension of the third planning period SIP deadline to at least July 31, 2031, but believes EPA should additionally (1) adopt a longer extension; (2) commit to reassess this deadline when EPA promulgates its intended revisions to the Regional Haze Rule; and (3) also extend the deadline for periodic progress reports.

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<sup>1</sup> 89 Fed. Reg. 104,471 (Dec. 23, 2024).

<sup>2</sup> *Id.* at 104,472.

<sup>3</sup> Regional Haze Program Requirements, 40 C.F.R. § 51.308(f) (2024).

<sup>4</sup> 89 Fed. Reg. at 104,474.

As an initial matter, EPA has statutory authority to extend this deadline. The Clean Air Act (“CAA”) does not impose specific SIP submittal deadlines on the states, and the CAA’s “reasonable progress” provisions allow significant flexibility with respect to the development of successive SIPs to address regional haze.<sup>5</sup> Moreover, there is recent precedent for such an extension, as the Proposed Rule notes.<sup>6</sup>

The explanations for the extension that EPA articulates in the Proposed Rule provide strong and well-reasoned rationales for an extension. For instance, EPA says the proposed extension is, in part, intended to “allow[] States to obtain and consider the potential emissions reductions resulting from implementing other near-term regulatory programs, including implementation of measures adopted as part of the regional haze second implementation period”<sup>7</sup> and therefore develop more effective SIPs. PGen agrees. Under the current Regional Haze Rule, states are required to address the impacts of other CAA regulatory programs when developing their SIPs.<sup>8</sup> Allowing states to gather and incorporate more information on the effects of these programs as they develop their SIPs “presents a strategic opportunity for States to coordinate their strategies to address significant sources of emissions”<sup>9</sup> that align with Regional Haze Rule requirements. PGen agrees that an extension will facilitate a program that better incorporates preliminary insight from implementing second planning period SIPs and other CAA regulatory program planning to improve visibility in Class I areas.

EPA also states in the Proposed Rule its intention to revise the Regional Haze Rule and to amend third-implementation-period regulatory requirements through notice-and-comment rulemaking.<sup>10</sup> Those revisions to the Regional Haze Rule, once finalized, will impact the third round of SIPs. The Proposed Rule explains that, in light of EPA’s intended revisions to the Regional Haze Rule, “[t]he current SIP revision deadline of July 31, 2028, is not expected to provide States with enough time to develop their regional haze SIP revisions to reflect any updated requirements....”<sup>11</sup> States will thus need adequate time *after* the promulgation of revised rules to develop SIPs.

To prepare a SIP for submittal, states must conduct photochemical modelling and other technical analyses to estimate their contributions to anthropogenic visibility impairment in federal Class I areas. In developing their SIPs, states must make appropriate and reasonable decisions regarding their long-term strategies to address visibility impairment, document the technical support for their decision-making, consult with Federal Land Managers, satisfy notice-and-comment requirements, and sometimes engage in lengthy state legislative processes.<sup>12</sup> EPA

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<sup>5</sup> See 42 U.S.C. 7491(a)(4), (b)(2).

<sup>6</sup> 89 Fed. Reg. at 104,474 (citing Protection of Visibility: Amendments to Requirements for State Plans, 82 Fed. Reg. 3078, 3116-3118 (January 10, 2017)).

<sup>7</sup> *Id.* at 104,473.

<sup>8</sup> 40 C.F.R. § 51.308(f)(3)(i).

<sup>9</sup> 89 Fed. Reg. at 104,475.

<sup>10</sup> *Id.* at 104,472.

<sup>11</sup> 89 Fed. Reg. at 104,472.

<sup>12</sup> See 89 Fed. Reg. at 104,474.

concludes states may need four years to complete this work and develop SIPs.<sup>13</sup> EPA also acknowledges that states were given approximately 4.5 years to implement the latest Regional Haze Rule revisions, promulgated in 2017, and only eight of 52 required states were able to submit final SIP revisions in that time.<sup>14</sup> Based on the current rule revision schedule, EPA estimates that a 2031 deadline will give states approximately four years to develop their technical analyses and SIP submissions.<sup>15</sup>

PGen agrees that this information supports extension of the deadline for regional haze SIP submittal, but the length of the extension remains a concern. PGen agrees that states will need *at least* four years to develop regional haze SIPs. That four-year period should be counted from the date of promulgation of the rules that will govern the third planning period. It is not reasonable to expect states to begin the work needed to develop SIPs without this regulatory certainty and guidance. The proposed extension from July 31, 2028, to a revised due date of July 31, 2031, may not be adequate, depending on the timing of EPA's rule revisions. Accordingly, PGen suggests EPA commit to readdressing the deadline for SIP submittals as part of the final action the Agency takes on the anticipated Regional Haze Rule revisions. Although PGen agrees that this preliminary extension is appropriate because it will provide states with near-term relief from the current deadline, the possibility for delay in the revisions to the Regional Haze Rule could warrant a further extension. Providing that extension at the time of the finalization of revisions to the Regional Haze Rule would give states greater regulatory certainty.

Likewise, PGen notes that even after it finalized Regional Haze Rule revisions for the second implementation period of the program in 2017, EPA continued to release significant guidance related to SIP development for that planning period, including on July 8, 2021, just weeks before second planning period SIPs were due to EPA.<sup>16</sup> To provide states with adequate notice of their obligations and adequate time to respond to changing EPA requirements and recommendations, PGen further requests that EPA commit to extending SIP submittal deadlines to accommodate any relevant guidance that might also impact the SIP development process.

Further, as the Proposed Rule explains, the record demonstrates that states are likely to need longer than four years to complete the work that EPA anticipates. EPA does not adequately explain why a deadline that will provide an estimated four years to complete third-round regional haze SIPs will be sufficient when that has not been a sufficient length of time for previous implementation periods.<sup>17</sup> EPA also does not grapple with its findings that states previously had 4.5 years and that the majority of states missed the SIP submittal deadline, in many cases by substantial periods of time.<sup>18</sup> EPA should assess the length of time states have needed to

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period (July 8, 2021).

<sup>17</sup> *See Id.* at 104,474.

<sup>18</sup> *See, e.g.,* Proposed Rule, "Air Plan Disapproval; West Virginia; Regional Haze State Implementation Plan for the Second Implementation Period," 90 Fed. Reg. 6932, 6932 (Jan. 21, 2025) (West Virginia Department of Environmental Protection submitted its revised SIP for the second planning period to EPA on Aug. 1, 2022);

complete their regional haze proceedings and provide a deadline extension more likely to provide adequate time.

Finally, for reasons similar to those EPA provides for the extension of the deadline for third planning period regional haze SIPs, EPA should also extend the deadline for the third periodic progress report required under 40 C.F.R. § 51.308(g). That provision directs states to “periodically submit a report to the Administrator evaluating progress towards the reasonable progress goal for each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State.”<sup>19</sup> These reports are required to include an assessment of emission reductions achieved through the implementation of the state’s regional haze SIP and an evaluation of visibility improvements over the “most recent 5-year period preceding the required date of the progress report for which data are available as of a date 6 months preceding the required date of the progress report.”<sup>20</sup> Periodic progress reports for the third planning period are currently due by July 31, 2033, just two years after the proposed extended deadline for SIP submittals.<sup>21</sup> A progress report assessing data over the five year period preceding that deadline could not possibly reflect implementation of third planning period SIPs, eliminating the usefulness of the progress report. Given the current deadline for the third planning period progress report, those reports will not serve the purpose intended for them under EPA’s Regional Haze Rule. An extension of that deadline by an amount of time that is at least commensurate with EPA’s deadline for SIP submittals is therefore appropriate. Alternatively, EPA could eliminate the progress report entirely.<sup>22</sup>

In sum, because the proposed deadline extension is well supported, will result in more effective environmental policy-making, and will support the states as they develop their SIPs for the third implementation period of the regional haze program, EPA should finalize a deadline extension until at least July 31, 2031. PGen further requests that EPA provide an extension sufficient to provide states with the time they have historically needed to complete new regional haze SIPs and that EPA base the extended deadline on the release date of revised regional haze regulations or any significant new guidance that follows. PGen further requests that EPA commit to extending the SIP submittal deadline further if the Regional Haze Rule revisions are delayed or if EPA releases other substantial guidance that will affect SIP development for the third

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Proposed Rule, “Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; Regional Haze State Implementation Plan for the Second Implementation Period,” 89 Fed. Reg. 103,737, 103,737 (Dec. 19, 2024) (California submitted its revised SIP for the second planning period to EPA on Aug. 9, 2022); “Air Plan Approval; Georgia; Second Period Regional Haze Plan,” 89 Fed. Reg. 92,038, 92,038 (Nov. 21, 2024) (Georgia submitted its SIP for the second planning period to EPA on Aug. 11, 2022).

<sup>19</sup> 40 C.F.R. § 51.308(g).

<sup>20</sup> *Id.* § 51.308(g)(3).

<sup>21</sup> *Id.* § 51.308(g).

<sup>22</sup> The utility of periodic progress reports is questionable given the length of time needed to develop SIPs and the length of each implementation period. EPA should therefore eliminate altogether the progress report requirement. Nothing in section 169A or section 169B of the Act requires periodic progress reports, and the requirement that states prepare and submit substantive regional haze SIP revisions periodically for each ten-year implementation period is adequate to ensure reasonable progress. Eliminating the progress report requirement would save resources and allow states to focus on SIP development for future planning periods.

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planning period. Finally, PGen recommends that EPA revise the requirement that states submit their next periodic progress reports to similarly extend their deadline from July 31, 2033, by a length of time equal to the extension for third planning period SIPs.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron Flynn".

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Aaron M. Flynn  
Counsel for the Power Generators Air Coalition

CC: Paige Wantlin  
Brian Timin