

to meet the 2027 standard or cease operation by that date, all while being faced with the uncertainty of other regulatory actions that are also being reconsidered.

As EPA recognized in a recent rulemaking, “several coal-based EGUs have already been considering retirement in 2028 (or earlier) under compliance pathways available under the Clean Water Act effluent guidelines and the coal combustion residuals rule under the Resource Conservation and Recovery Act.”⁷ The Final Rule may further disrupt these plans and risk capacity shortfalls until replacement generation can be procured. These early retirements will significantly impact grid reliability. Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”), such as SPP⁸, have issued warnings about the adequacy of generation resources to meet peak demand situations.⁹ The North American Electric Reliability Corporation (“NERC”)’s 2024 Long-Term Reliability Assessment indicated that “[t]here are over 8 GW of coal and gas-fired generators that have indicated they plan to retire over the next 10 years in SPP,” emphasizing that “[w]ithout sufficient dispatchable generation, SPP can experience energy shortages when output from wind resources is low.”¹⁰

EPA has previously found that circumstances where “[g]eneration from the retiring unit is needed to maintain reliability while other units install emission controls” provide a reasonable basis for granting a one-year compliance extension for MATS.¹¹ There is significant overlap between the availability of a one-year compliance extension and circumstances supporting a Presidential Exemption. Under CAA Section 112(i)(3)(B), a one-year extension is available if it is “necessary for the installation of controls.” A Presidential Exemption pursuant to Section 112(i)(4) can similarly be granted based on the unavailability of technology, which may relate to supply-chain shortages and other installation challenges that would also fall within the scope of Section 112(i)(3)(B).¹²

President Trump has emphasized that “[a]n affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation” and that “[t]he United States’ insufficient energy production, transportation, refining, and generation constitutes an unusual and extraordinary threat to our Nation’s economy, national security, and foreign policy.”¹³ Based on these concerns, President Trump declared a National Energy Emergency pursuant to the National Emergencies Act (50 U.S.C. § 1601 *et seq.*), and 3 U.S.C. § 301.¹⁴ President Trump has further emphasized that “high energy costs devastate American consumers by driving up the cost of transportation, heating, utilities, farming, and manufacturing, while weakening our national security,” and highlighted the need to “protect

⁷ 88 Fed. Reg. 36,654, 36,796 (Jun. 5, 2023).

⁸ WFEC is a member of SPP. SPP serves a fourteen-state footprint in the central United States. SPP’s amended tariff allowing for western expansion was approved by the Federal Energy Regulatory Commission on March 20, 2025, which will allow operations in both the Western and Eastern Interconnections of the nation’s power grid.

⁹ See, e.g., 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*, 9 (Apr. 2, 2024), https://www.ndic.nd.gov/sites/www/files/documents/TransmissionAuthority/Publications/MATS_Analysis_Report.pdf

¹⁰ NERC, 2024 Long-Term Reliability Assessment, (Dec. 2024), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf.

¹¹ 77 Fed. Reg. 9340, 9410 (Feb. 16, 2012).

¹² *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers*, Section 2(b)(i) (Jan. 16, 2025).

¹³ Executive Order 14156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8,433 (Jan. 29, 2025).

¹⁴ See *id.*