JARED POLIS
GOVERNOR

136 STATE CAPITOL
DENVER, COLORADO 80203

TEL 303-866-2471
FAX 303-866-2003

October 18, 2022

The Honorable Alejandro Mayorkas
Secretary, U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

The Honorable Jennifer Granholm
Secretary, U.S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Dear Secretary Mayorkas and Secretary Granholm,

I write with deep concern and frustration regarding the inclusion of proposal S76-22 from the Federal Emergency Management Agency (FEMA) in the 2024 International Building Code (IBC) at the International Code Council (ICC). If included, this proposal would require any jurisdiction who adopts the 2024 IBC to raise the structural Risk Category of new public utility power generation projects, including solar, energy storage, and wind, to Category 4, the highest Risk Category, putting these projects on par with critical facilities such as hospitals and fire stations. In doing so, this proposal would stifle deployment of these renewable energy projects at a time when they are needed most and where their current design and deployment is already offering increased resilience to the power grid over traditional centralized fossil fuel-based systems.

As you know, most solar and wind energy projects in the United States are currently rated in structural Risk Categories 1 and 2, meaning they are deemed to have a "low hazard to human life in the event of failure." Raising these projects from the lowest hazard levels to the highest is a drastic change that will have ripple effects throughout the entire clean energy industry. While I thoroughly acknowledge the importance of ensuring the safety and reliability of our electricity grid, there is very little evidence to indicate that structural failures of these renewable energy technologies are a significant threat to that reliability.

Even more concerning, the North American Electric Reliability Corporation and the Federal Energy Regulatory Commission – the two agencies with primary jurisdiction over electric grid reliability – were not engaged in the development or consideration of proposal S76-22. Neither were state Public Utilities Commissions, who are responsible for approving regulated utility

projects to balance safety, affordability, reliability, and other state policy objectives. Without consultation of that expertise, we have no assurance that raising the Risk Category for these renewable resources would do anything to improve the reliability of our grid.

In addition, this proposal makes no distinction between the different risks faced by different jurisdictions, and would apply a blanket requirement with no consideration of the balance between the energy resilience benefits of these technologies as they are currently deployed and theoretical concerns about their structural integrity in the event of disasters. S76-22 seems to bear no relation to the realities of how the electric grid really works, or how states are utilizing wind, solar, and storage to improve energy resilience today.

What we do know, though, is the cost, supply chain, and manufacturing uncertainty that this proposal would cause. In order to meet the requirements of Risk Category 4, solar and wind projects in some cases would need to be as much as 50 percent sturdier than current installations, requiring additional materials that would dramatically increase the costs of these projects and a redesign of manufacturing processes that could take years. The consequences of these impacts are likely to be severe, as many projects could be canceled or experience long delays as they wait for manufacturers to get new components out the door. This will have a negative impact on grid reliability, by slowing down the addition of critical new capacity projects. Here in Colorado, we are already seeing the impacts of supply chain constraints delaying important solar projects that are critical contributors to summertime peak electricity production in our state; this proposed code change would make these existing supply chain and manufacturing problems more severe and longer lasting.

If adopted, S76-22 will also have immediate impacts on the cost of electricity for Coloradans and all Americans during a time of record inflation and great energy cost burdens, and when all else being equal renewable energy is the cheaper electricity produced. I cannot accept a proposal that does nothing to materially advance energy resilience while also increasing the costs of the cheapest power available to Coloradans.

My administration has set an ambitious target of 100% renewable electricity generation by 2040 and in 2019 I signed legislation to set our state on a path to reduce greenhouse gas emissions by at least 90% by 2050. If FEMA's proposal is adopted, those targets will be far more difficult to achieve. The climate crisis demands nothing less than a full-court press on deployment of renewable energy, battery storage, electric vehicles, and other clean energy technologies. In addition to slowing the deployment of clean energy, this proposal may result in fragile fossil fuel generation that was planned for retirement remaining online if solar and wind can't be built to replace it. These actions reduce the future weather extremes due to climate change that FEMA is concerned about.

We cannot allow unproven requirements like those proposed in S76-22 to stifle the progress we are making in my state and in states across the country to combat climate change and provide our residents with the lowest cost, cleanest power in the world. I urge you to abandon this undemocratic, unfounded proposal in the 2024 IBC – or any future code. Without the proper analysis, state consultation, or consideration of each jurisdictions' needs, this blanket policy will work against the interests of Colorado residents, raise energy costs, and curtail our energy resilience and climate goals.

I understand FEMA is now advising ICC voters to adopt alternative proposals (S79-22, as modified by public comment 1, and S81-22, as modified by public comments 3 and 4) put forward by the Solar Energy Industries Association (SEIA). S79-22, as modified, would ensure power generating stations are included in the highest Risk Categories (3 and 4) only if they are serving as emergency backup to critical facilities or are large-scale stations with individual unit capacity of 75 MWac or larger. S81-22, as modified, would designate the proper Risk Category assignments for various solar PV installations to ensure that jurisdictions aren't enforcing unreasonable risk requirements for low-risk solar projects.

I urge the Department of Energy and the Biden Administration to delay further action. If some action is being contemplated now, then please ensure impacted stakeholders are aware of these alternatives and vote in favor of them at the ICC. These proposals create reasonable standards to ensure reliability and resilience without stifling our shared clean energy goals.

Sincerely,

Jared Polis
Governor
State of Colorado

Cc:
The Honorable Deanne Criswell
Administrator, Federal Emergency Management Agency
500 C Street SW
Washington, D.C. 20024

Ali Zaidi
National Climate Advisor
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20500

John Podesta
Senior Advisor to the President for Clean Energy Innovation and Implementation
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20500