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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510–6150

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May 17, 2011

The Honorable Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Chairman Wellinghoff:

The Environmental Protection Agency (EPA) has proposed or promulgated over the last year a series of rules under the Clean Air Act (CAA) and other statutes intended to protect the environment and public health. Administering these statutes is an essential part of the EPA's mission. However, I am concerned about the potential impact of these rules on the reliability and affordability of the nation's electric supply. A reliable and affordable power supply is equally critical to the public welfare, including public health, and to our nation's economic well-being.

I solicit your thoughts, specifically, on the electric reliability implications of these EPA actions and on any work that the Federal Energy Regulatory Commission ("the Commission" or "FERC") may have undertaken in this area. In particular, I am interested in your perspective on the electric reliability impacts of the rules listed below, especially in light of the cumulative significance of the requirements they will impose, the technological and economic difficulties that may arise from efforts to comply with them, and the haste with which they have been developed and implemented.

- National Ambient Air Quality Standards for Nitrogen Dioxide (published February 9, 2010)[1]
- Clean Air Act Permitting for Greenhouse Gas Emissions (published June 3, 2010)[2]
- National Ambient Air Quality Standards for Sulfur Dioxide (published June 22, 2010)[3]
- Coal Combustion Residuals rule (proposed June 21, 2010)[4]
- Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM2.5) (published October 20, 2010)[5]

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[1] Docket number: EPA-HQ-OAR-2006-0922.
[2] Docket number: EPA-HQ-OAR-2009-0517.
[3] Docket number: EPA-HQ-OAR-2007-0352.
[4] Docket number: EPA-HQ-RCRA-2009-0640.
[5] Docket number: EPA-HQ-OAR-2006-0605.

- Clean Air Transport Rule to replace the Clean Air Interstate Rule (proposed August 2, 2010, final rule expected July 2011)[6]
- Reconsideration of National Ambient Air Quality Standards for Ground-Level Ozone (proposed January 19, 2010, final rule expected August 2011)[7]
- MACT Standards for Hazardous Air Pollutants and NSPS for Utilities - Utility Air Toxics Rule (proposed March 16, 2011, final rule expected November 16, 2011)[8]
- New Source Performance Standards for Greenhouse Gas Emissions from Electric Generating Units (proposed rule expected July 26, 2011, final rule expected May 26, 2012)[9]
- Section 316(b) Cooling Water Intake Existing Facilities Rule (proposed rule April 20, 2011)[10]
- New Particulate Matter National Ambient Air Quality Standards (proposed rule expected Summer 2011)
- Steam Electric Effluent Limitations Guidelines (proposed rule expected July 2012)[11]

The Commission has at least notionally recognized the potential impact of these rulemakings on electric reliability. In its FY 2010 Performance and Accountability Report, FERC noted that:

> Commission staff performed a cursory analysis of the potential retirement of coal fired generation and its effect on system reliability. This study provided information on the resulting reduction of capacity margins and reliability issues caused by the shut-down of the at-risk coal units from possible environmental regulations.[12]

Moreover, beyond mere recognition of the potential impact of these rulemakings on electric reliability, the Commission's staff appears to be collaborating with EPA to some extent. At the Commission's September 2010 open meeting, for example, you observed, "I do believe that there is forming an Interagency Task Force that we're working with EPA and CEQ and others to look at this . . . issue" of the impact of initiatives such as the ones listed above.[13] You were responding to Commissioner Moeller's expression, at the same meeting, of "hope that we can have a dialogue, perhaps a more formal dialogue, with [EPA], particularly with our experts in the Reliability Office, so that the electric

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[6] Docket number: EPA-HQ-OAR-2009-0491.
[7] Docket number: EPA-HQ-OAR-2005-0172.
[8] Docket numbers: EPA-HQ-OAR-2009-0234, EPA-HQ-OAR-2011-0044.
[9] EPA, *Settlement Agreements to Address Greenhouse Gas Emissions From Electric Generating Units And Refineries: Fact Sheet*. Available at: http://www.epa.gov/airquality/pdfs/settlementfactsheet.pdf. (Last visited 5/13/11).
[10] Docket number: EPA-HQ-OW-2008-0667.
[11] Docket number: EPA-HQ-OW-2009-0819.
[12] FERC, *FY2010 Performance and Accountability Report*, published November 2010, p. 20. Available at: http://www.ferc.gov/about/strat-docs/2010-audit.pdf.
[13] *Id.* at p.45, lines 23-25.

reliability implications of shutting down some of these plants are well understood before we go down the direction of shutting them down."

The Utility Air Toxics Rule confirms a collaborative effort with FERC by noting that EPA:

> has already begun reaching out to key stakeholders including not only sources with direct compliance obligations, but also groups with responsibility to assure an affordable and reliable supply of electricity including state Public Utility Commissions (PUC), Regional Transmission Organizations (RTOs), the National Electric Reliability Council (NERC), the Federal Energy Regulatory Commission (FERC), and DOE.[14]

That rulemaking goes on to state:

> EPA intends to continue these efforts during both the development and implementation of this proposed rule. It is EPA's understanding that FERC and DOE will work with entities whose responsibility is to ensure an affordable, reliable supply of electricity, including state PUCs, RTOs, [and] the NERC, to share information and encourage them to begin planning for compliance and reliability as early as possible. This effort to identify and respond to any projected local and regional reliability concerns will inform decisions about the timing of retirements and other compliance strategies to ensure energy reliability.[15]

Furthermore, it has been reported that, "FERC and EPA are jointly modeling the potential for coal-fired power plant closures prompted by pending EPA climate, water and other rules."[16] You were reported to have said "we certainly need to have better information on what is going to retire when," and that FERC and EPA have the resources to set up a framework addressing "the problems of what happens" to grid capacity should plants go offline. Commissioner Moeller was quoted as "encouraged," but was described as needing "more details about the collaborative effort."[17]

Any collaboration between FERC and EPA on establishing or implementing these rules is of critical interest to the nation. I am interested in your views about the potential consequences of these initiatives as well as their relationship to FERC's mission and statutory authority, especially with respect to electric reliability. I therefore respectfully request detailed answers to the following questions:

1. With respect to the impact on electric reliability of the listed EPA rules affecting generation of electric power, please list and describe the Commission's actions taken; studies conducted; assistance provided to any other agency, including EPA;

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[14] Docket numbers: EPA-HQ-OAR-2009-0234; EPA-HQ-OAR-2011-0044.
[15] *Id.*
[16] Energy Washington Week, Vol. 8 No. 4, 1/26/11. "FERC, EPA MODELING IMPACT OF RULES ON COAL UTILITY CLOSURES, RELIABILITY."
[17] *Id.*

collaborative efforts with any other agency; and provision of data to any other agency.

2. Regarding collaborative efforts between FERC and EPA described above, has an Inter-Agency Task Force been established? If so, please state or provide:

   a. the date it was established;
   b. the source of its authority;
   c. a copy of its charter;
   d. a description of the scope of its work;
   e. a schedule of its meetings, including a list of its meetings to date and any planned meetings;
   f. any minutes of its meetings; and
   g. a list of the agencies and agency officials participating.

3. Please describe all work being jointly performed by FERC staff, including work done in collaboration with EPA – whether in connection with an Inter-Agency task force or otherwise – regarding the potential impact of EPA regulations on the retirement of electric generating units and, to the extent such information has been developed, the specific type and characteristics of units that may face retirement as a consequence of such regulations.

4. Please describe FERC's efforts to explain the effect of potential retirements on electric reliability. If research, data, or analysis has been developed by or supplied to FERC, please provide it. If no analysis has been conducted, please explain why.

5. Please describe fully FERC's powers to protect electric reliability in the event of plant retirements, and what measures FERC plans to take to ensure electric reliability or an explanation of why such measures have not been devised. Please provide the following assessments, or an explanation of why such assessments have not yet been devised:

   a. an assessment of generation adequacy in the face of retirements of significant generating units in transmission-constrained areas;
   b. an assessment of the effect of retirements of generating units in organized markets for energy and capacity (e.g. on prices and unit commitment); and,
   c. a general assessment of the capacity to permit and construct new electric generation units in a timely manner such that electric supplies from retired plants are replaced and anticipated demand growth is met.

6. The Clean Air Transport Rule specifically lists ensuring electric reliability as a "key guiding principle." Please describe any research, documentation, or analysis FERC has provided EPA for this rule.

7. Regarding the Commission's FY 2010 Performance and Accountability Report to Congress, quoted above, and the staff analysis of electric reliability impacts referenced in the quotation, please describe or provide:

    a. the study and all supporting materials including research;
    b. a list of any other agencies involved in the production of the study with information on their involvement;
    c. actions FERC has taken or plans to take based on the study; and
    d. how and where the study has been made public, or why it has not been released.

8. In your view, would compliance with EPA or other environmental regulations excuse a violation of FERC-approved electric reliability standards? If so, should the Commission refrain from imposing penalties for these violations?

9. Please assess whether FERC has sufficient statutory authority to protect electric reliability in collaboration with other federal entities that are undertaking rulemakings.

10. Is FERC or any other agency, to your knowledge, soliciting or relying upon advice or assistance from any entity established pursuant to the Federal Advisory Committee Act?

The impact of EPA regulations on electric reliability is of critical importance to the nation. EPA established its rules and is still developing rules in accordance with the Administrative Procedure Act, which requires public notice and comment periods. I believe collaborative efforts among EPA and other agencies to protect electric reliability in the wake of these rules should also be open and transparent.

Thank you for your attention to this matter and I look forward to your reply.

Sincerely,

Lisa A. Murkowski