

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

May 15, 2015

Janet G. McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Acting Assistant Administrator McCabe:

Thank you for your letter of May 6, 2015, regarding the Environmental Protection Agency's (EPA) Clean Power Plan proposal and the Commission's recent conferences on the proposal. We appreciate the attendance and participation by you and other EPA representatives at those conferences, and your openness to the perspectives offered by us and others there. We also appreciate the fact that you and others from EPA have met with each member of the Commission on more than one occasion. As you know, the conferences focused on the proposal's possible effects on three aspects of the Commission's responsibilities: electric reliability; energy infrastructure; and wholesale energy markets. Our letter today addresses the reliability issues discussed at the conferences.

First, as you know, many of the conference speakers expressed concern about the interim goals in the proposed Clean Power Plan, and suggested a need for more flexibility in the early years of compliance. This issue may be the most prominent, and most discussed, of the reliability issues raised at the conferences and elsewhere. As your letter recognizes, EPA's final rule should provide enough time and flexibility for affected entities to take the actions that they must take to ensure system reliability. These actions could include the construction of gas or electric infrastructure to support the addition of new capacity. Thus, we trust EPA will consider the concerns raised with the interim goals, and other views expressed on this issue, as EPA finalizes its rule. Various commenters indicated, for example, that more flexibility on the interim goals may lessen reliance on other processes for addressing reliability.

Apart from this issue, we will focus on how the Commission can continue to fulfill its responsibility on Bulk-Power System reliability after EPA releases any final rule on the Clean Power Plan. Numerous panelists at the conferences urged the Commission to work with EPA to address any reliability issues that arise as

states comply with the Clean Power Plan. Specifically, panelists recommended that the Commission work with EPA to establish processes for modifying compliance obligations when unforeseen delays in implementation efforts could otherwise risk harm to reliability (a “Reliability Safety Valve”) and for generally reviewing state plans for interstate impacts on reliability (“Reliability Monitoring and Assistance”).

Reliability Safety Valve

For the purpose of this letter, we define the Reliability Safety Valve as a process through which the affected entities can petition the EPA for temporary waiver or adjustments to the emissions requirements or compliance timelines in an approved state plan to preserve Bulk-Power System reliability.

If the EPA chooses to adopt a Reliability Safety Valve, the Commission’s participation should be clearly defined, as in the process for the Mercury and Air Toxics Standards (MATS) fifth year.¹ Specifically, after a plan is approved and in place, the Commission could review a petitioner’s claims that unforeseen or emergency system conditions will result in violation of a Commission-approved Reliability Standard or reserve margin deficiency, unless a compliance obligation is adjusted. In addition, as we indicated for the MATS process, we could identify issues, pursuant to our other areas of authority, such as requirements in a Commission-approved tariff. Similarly, the Commission could review the petitioner’s proposed mitigation as to whether it will resolve the Reliability Standard violation or reserve margin deficiency. In this narrow role, the Commission would not opine on other issues that EPA could consider, such as whether an applicant had made sufficient efforts to resolve the Reliability Standard violation without deviating from approved emissions requirements or compliance timelines or whether there were other ways to resolve the Reliability Standard violation or reserve margin violation deficiency. That is, the Commission’s role would be to consider whether a specified set of loads, resources and grid facilities would cause a Reliability Standard violation or

¹ See *Policy Statement on the Commission’s Role Regarding the Environmental Protection Agency’s Mercury and Air Toxics Standards*, 139 FERC ¶ 61,131 (2012); *The Environmental Protection Agency’s Enforcement Response Policy For Use Of Clean Air Act Section 113(a) Administrative Orders In Relation To Electric Reliability And The Mercury and Air Toxics Standard* (Dec. 16, 2011), <http://www.epa.gov/compliance/resources/policies/civil/erp/mats-erp.pdf>.

reserve margin deficiency, not whether the applicant or EPA should pursue a different set of options and, if so, which options.

If EPA is interested in further developing this concept, our staff is available to work with EPA staff on the specific reliability-based information that applicants should be required to provide to facilitate our assessment of a request for relief. Our expectation is that this information could be similar to the information required of applicants seeking a fifth year under MATS, with any modifications needed for the context of the Clean Power Plan.

Reliability Monitoring and Assistance

As noted above, various panelists at our conferences advocated a process that takes place prior to, or in parallel with, EPA's review of state plans to identify and potentially mitigate potential reliability concerns. Industry participants suggested that this oversight consist of Commission and/or North American Electric Reliability Corporation (NERC) review of all state plans to ensure that the combined effects of state plans do not negatively impact electric reliability.

Before turning to the technical aspects of these proposals, it is important to note that the Commission's role on reliability is defined by Congress, and generally consists of approving proposed reliability standards for the Bulk-Power System, if they meet the statutory criteria, and then enforcing or overseeing enforcement of those standards. The Commission's exercise of its rate jurisdiction also, at times, has effects on reliability issues. But, reliability also depends on factors beyond the Commission's jurisdiction, such as state authority over local distribution and integrated resource planning. Similarly, state authority to propose plans for compliance with the federal Clean Air Act does not depend on, or require, Commission approval. The Commission also lacks specific statutory authority to require a public utility to build a new power plant or new transmission line. The Commission is not seeking to alter this balance of Federal and state roles or to assert authority over state plans. Any Commission role in this area must be crafted carefully to respect the authority and responsibility of states.

With this background, we believe a process to review state plans for potential reliability concerns should rely primarily on existing processes for identifying and addressing reliability issues, adjusted as appropriate for the circumstances. Planning authorities such as RTOs and ISOs or, in other areas, NERC, Regional Entities or reliability coordinators currently model the electric grid to plan and assess the reliability of the Bulk-Power System. These processes are generally adequate, although increased effort by industry will be needed as

State plans are developed. As appropriate, the Commission could then review the analyses, suggest or request additional or modified analyses or, in limited cases, perform analyses itself. Under existing FERC statutory authority, the Commission could look more closely at particular areas or issues, subject to resource availability, and taking into consideration requests by EPA, States, or others.

For areas or issues of concern, the Commission could convene technical conferences, require presentations at Commission meetings, or engage in other forms of outreach at fora such as the National Association of Regulatory Utility Commissioners and NERC meetings. If requested by EPA, the Commission could provide formal input on a particular plan or set of plans, subject to resource availability. In any event, the Commission's role generally should focus on the regional aspects of Clean Power Plan compliance. Our staff is prepared to work with EPA staff to provide this Reliability Monitoring and Assistance.

Conclusion

The Commission intends to stay informed about the development of state plans so that the Commission will be able to respond to Bulk-Power System reliability issues that might arise. We appreciate EPA's engagement with the Commission on how the Clean Power Plan may affect the reliability of the Bulk-Power System and hope to continue this dialogue as the Clean Power Plan is finalized and implemented.

Sincerely,



Norman C. Bay
Chairman



Philip D. Moeller
Commissioner



Cheryl A. LaFleur
Commissioner



Tony Clark
Commissioner



Colette D. Honorable
Commissioner