

Commissioner Cheryl LaFleur
House Energy and Commerce Committee Hearing
Impacts of the Environmental Protection Agency's
New and Proposed Power Sector Regulations on Electric Reliability
September 14, 2011

Thank you very much Mr. Chairman, ranking member Rush, and members of the subcommittee. I also very much appreciate the opportunity to testify today. My name is Cheryl LaFleur. In July 2010 I was confirmed as a Commissioner of the Federal Energy Regulatory Commission.

In my past career I had the privilege of serving electric and natural gas customers in New England and New York. That experience taught me firsthand how important electric reliability is to real people and real communities. Since joining the Commission a little over a year ago, I've made reliability one of my top priorities.

For some time now we've been hearing about the EPA's proposed air and water regulations, and their potential to affect our energy supply. Although not all of the regulations are final, I believe it's important to consider them as a package when assessing their potential effect on reliability. This is because the owner of a power plant will appropriately consider all of its EPA regulations, among other factors, in determining whether it's economically feasible to retrofit or repower a unit or whether it makes economic sense to retire the unit.

Should the owner of a power plant decide to retire a unit because the unit cannot be economically retrofitted to meet the new EPA regulations, it must notify the state and regional planning authorities of its decision. Those authorities must then determine whether there is enough available generation or transmission available to allow the unit to retire without affecting reliability, or whether the retirement will create the need for new generation, new transmission or other resources in order to maintain reliability.

Like an owner's decision whether to retrofit or replace a unit, the reliability consequences of a retirement will be dependent on the specific facts of each case, each locality and each region. While the EPA regulations are not expected to affect our overall resource adequacy as a nation, they present reliability issues in particular localities or regions.

In some regions, conditions may be such that a retirement or several retirements related to the new regulations will not create a reliability concern. In other areas, the retirement of even a single unit may create the need for an alternative.

In this regard, I believe that for studies about the potential effects of the EPA regulations to have the most accuracy and predictive value, they must be conducted after the regulations are final and unit owners have decided whether to retrofit or retire. Studies under these conditions don't necessarily require the extensive number of assumptions required for nationwide analysis that are driving all the different numbers we have now and are more likely to really drill down on the local and regional issues that we really need to face.

If a retirement does create a potential reliability issue, the owners and the planning authorities must determine what resources will replace the unit and how long it will take to bring the new resources online. Given the long lead-time for certain types of resources, there may be a gap of time when a replacement facility is not yet available but the retiring unit is no longer compliant with the new regulations.

In such cases, a time-limited waiver of EPA regulations may be needed. In other cases, a reliability-must-run contract under the authority of the Commission may also be needed to allow the power plant to operate within certain discrete parameters for a defined period of time.

I believe that any waivers or flexible solutions must be targeted and discrete. Specific reliability analyses at the local and regional level are much more meaningful than all the nationwide estimates that are floating around. The circumstances of each retirement and the need for replacement are fact specific.

I do not support a blanket delay of the EPA regulations, but I will certainly champion specific extensions where needed for reliability. I believe that the EPA should, and that the EPA does, understand the need to be flexible in specific cases.

Because of our jurisdiction over regional transmission, utility rates and reliability standards, FERC should be actively involved in these issues when they arise. I believe we can play an important role in discussions among regional planners, NERC and the regional reliability entities, utilities, states and the EPA.

I think it would be helpful for FERC to sponsor a workshop or a series of workshops that bring together all these stakeholders to discuss the regulations and, as Commissioner Norris said, the tools that we have at our disposal to meet them.

For example, FERC can examine and approve market rules designed to facilitate reliability and designed to increase the notice that planners get when retirements are happening.

I am confident that we as a nation can ensure that the EPA's proposed air and water regulations do not adversely affect reliability provided there is coordination and flexibility in their implementation.

Thank you.