



February 28, 2012

Federal Energy Regulatory Commission
Attention: Docket ID No. AD12-1-000
888 First Street, NE
Washington, DC 20426

Re: **Staff White Paper** on the Commission's Role Regarding Environmental Protection
Agency's **Mercury and Air Toxics Standards**, January 30, 2012

To Whom It May Concern:

The Pennsylvania Department of Environmental Protection (DEP) appreciates the opportunity to submit comments on the Federal Energy Regulatory Commission's (FERC) *Staff White Paper on the Commission's Role Regarding Environmental Protection Agency's Mercury and Air Toxics Standards, January 30, 2012*. The White Paper explains the FERC staff's position on how the Commission should advise the Environmental Protection Agency (EPA) on requests for extension of time to comply with EPA's Mercury and Air Toxics Standards (MATS).

Background

DEP and others have noted and commented upon EPA's across-the-board "rush to judgment" in not just the MATS Rule and Transport Rule (aka Cross State Air Pollution Rule – CSAPR) but also in many other rulemakings, causing it to make scientific and technical errors. EPA has admitted errors dealing with electric reliability issues, and many observers have noted EPA has very little expertise and had done too little analysis or consultation with experts regarding electricity market dispatch/local grid security issues. For example, EPA, with respect to the CSAPR Rule, realized after the final rule had been issued that it missed "out-of-merit" dispatch situations in New Jersey, New York's Long Island, Louisiana and Texas as well as missing New York Independent System Operator N-1-1 Contingency and Minimum Oil Burn Rules issues. EPA even missed the fact that a nuclear power plant in Florida was scheduled to be off-line for a year. This required EPA to have to acknowledge these substantial blunders in Error Corrections Rules published after the Rule had already been published in final form. As we have recently noted, this was only one of many cases in which EPA has had to acknowledge blunders shortly after a Rule had already been promulgated. This situation seems unprecedented in the history of EPA and is troublesome as it demonstrates a lack of due care and attention to facts in the rulemaking process.

The proposed rule setting hazardous air pollutant standards for electric generating units and boilers¹ (Utility MACT Rule) is yet another example of the EPA's rushed and careless analysis which leaves many experts with unaddressed concerns regarding electric grid reliability. In that proposed rulemaking, EPA committed the now well-known mistake of confusing "megawatts" with "gigawatts." Eleven Governors asked that EPA re-propose the Rule after appropriate study of its impacts on electricity grid reliability and its economic impacts, and 27 state attorneys general, including four Democrats, supported an amendment to a self-imposed court deadline by filing an amicus brief so that a more rigorous scientific and economic analysis could be done. Senator Murkowski and FERC Commissioner Moeller agreed that the impact of EPA power sector rules on grid reliability must be assessed. The PJM, the FERC-approved Regional Transmission Organization (RTO) serving all or parts of 13 states encompassing 20 percent of the Gross Domestic Product of the United States, 24 percent of all the generation, 27 percent of the load and 19 percent of all the transmission assets in the Eastern Interconnection, operates the largest competitive wholesale market in the United States and is responsible for both planning and reliable operation of the electric grid serving over 58 million people. PJM fully documented in its comments on EPA's proposed Utility MACT Rule how the agency failed to understand or fully analyze the grid security issue. FERC Commissioner Moeller has pointed to EPA's deficiency in this regard as well.

EPA has never adequately addressed the potential synergistic impacts of the anticipated suite of power sector rules on electric grid reliability. FERC Commissioner Moeller pointed this out in testimony before the U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Energy and Power, and in correspondence to Senator Murkowski. He also pointed out that the EPA had been derelict in failing to undertake consultation with FERC or RTOs in its process. Commissioner Moeller has also indicated that FERC should undertake an open process with the opportunity for public comment on the cumulative impacts of EPA's suite of regulations on the electric grid.

Because of this demonstrated lack of expertise on the part of EPA and its previous lack of recognition of electric reliability impacts, DEP is highly supportive of Planning Authorities and the Commission being involved in an effort to ensure the continued reliability of the electric system in the implementation of the final MATS Rule.² As EPA has stated, "in light of the complexities of the electric system and the local nature of many reliability issues, the EPA will, for purposes of using Section 113(a) Administrative Order (AO) authority in this context, rely for identification and/or analysis of reliability risks upon the advice and counsel of reliability experts, including, but not limited to, FERC, RTOs, Independent System Operators (ISOs) and other Planning Authorities as identified herein, the North American Electric Reliability

¹ National Emission Standards for Hazardous Air Pollutants from Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units (76 FR 24976 (May 3, 2011)).

² National Emission Standards for Hazardous Air Pollutants from Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units (77 FR 9304 (February 16, 2012)).

Corporation and affiliated regional entities, and state public service commissions and public utility commissions. The EPA will work with these and other organizations, as appropriate, to ensure that any claims of reliability risks are properly characterized and evaluated.”³

Comments to the Staff White Paper

The Staff White Paper specifically seeks comments to the process by which it will conduct its reviews of issues arising outside of a potential violation of a Reliability Standard under the Federal Power Act Section 215 as well as the other elements outlined in the EPA Policy Memorandum.

First and foremost, the Commission’s review should not be conducted “de novo.” The Commission should defer to the decisions, recommendations and counsel of the Planning Authority with day-to-day responsibility for ensuring electric system reliability for the area in which an affected steam electric generating unit (EGU) seeking a compliance extension under the AO process is located. The local Planning Authorities, ISOs and RTOs were created under the auspices of the FERC to be the independent experts in their areas on electricity market dispatch/local grid security issues. Their primary responsibility it is to ensure the reliability of the various grids in the United States. The Commission should rely on their judgments in these matters. The only situation under which the Commission should not immediately accept the decisions, recommendations and counsel of the local Planning Authority and consider or conduct a new, independent analysis is when the owner/operator of an affected EGU documents in writing that the owner/operator does not concur with the findings of the local Planning Authority. That documentation should include the basis for that lack of concurrence.

EPA requires the owner/operator to provide copies of any written comments from third parties directed to, and received by, the owner/operator in favor of, or opposed to, operation of the unit after the MATS compliance date. Appropriately, the FERC staff does not believe that entities should be permitted to intervene in the preparation of the Commission comments to the EPA. However, the Commission staff has stated they may consider those third party comments as part of the informational filing in developing its written comments to the EPA. DEP does not believe consideration of those third-party comments in an electric reliability analysis, even if informational only, is correct or desirable. The reliability analysis is not a subjective analysis; it is a technical, objective analysis to determine if the deactivation of an affected EGU or a legally justified delay in the installation of pollution control equipment on an affected EGU creates unacceptable risk to electricity market dispatch/local grid security. Consequently, the Commission should not consider those subjective third-party comments in the preparation of its written comments to EPA.

³ EPA’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 (December 16, 2011).

Comments to the EPA Policy Memorandum

The EPA Policy Memorandum requires the owner/operator to provide a written analysis of the reliability risk if the affected EGU were not in operation. In addition they are to provide "written concurrence with the reliability risk analysis" prepared by the local Planning Authority. That situation is reversed from the order in which these actions should be taken. The policy should be amended such that the owner/operator provides the reliability risk analysis prepared by the local Planning Authority and a separate, independent written analysis of the reliability risks prepared and provided by the owner/operator only if the owner/operator objects to the decisions, recommendations or counsel provided in the written analysis prepared and provided by the local Planning Authority.

The EPA Memorandum specifies that the owner/operator of a unit to be deactivated or that requires more time to install the necessary control equipment must provide a written demonstration of a plan to resolve underlying reliability problems and the steps and timeline for implementing the plan. Those actions are the responsibility of the local Planning Authority, and that plan should be prepared and provided by the local Planning Authority to the Commission, even if it is channeled through the owner/operator.

Identification of the level of operation of the EGU that is required to avoid documented reliability risk should be the responsibility of the local Planning Authority. That information should be provided to the owner/operator who can then develop a plan for the operational limits and/or work practices necessary during the compliance date extension provided by the AO process for submission to EPA.

Conclusion

EPA consultation with local planning authorities is long overdue. Commissioner Moeller and others have pointed that out. The proof is in the record of EPA's lack of sophistication in this area. Whereas EPA estimated that only 4.8 MW of electric generation will retire as a result of CSAPR, Chairman Wellinghoff told Congress last summer that preliminary projections by FERC staff estimated 81 GW of coal-fired electric generating capacity is either "likely" or "very likely" to retire, and another 50 GW is "somewhat likely" to retire because of EPA regulations affecting the power sector and the National Electric Reliability Council's 2011 Long-Term Reliability Assessment issued in November 2011 concludes that between 36-59 GW would likely retire or be lost as a result of the suite of EPA regulations impacting the electricity generation sector.⁴

Clearly, the EPA needs all the help in can get. And the citizens of the United States need EPA to get that help. As the Centers For Disease Control and Prevention has pointed out, grid reliability impacts have fundamental ramifications for the health and safety of communities. Put simply blackouts are public health and welfare hazards. Loss of power can result in, among other

⁴ "Potential Retirement of Coal-Fired Generation and its Effect on System Reliability," (Preliminary Results), Office of Electric Reliability, Division of Bulk Power System Analysis, FERC, as posted on the Senate Energy Committee website, <http://energy.senate.gov/public/>. The NERC Assessment is available at http://www.nerc.com/files/2011LTRA_Final.pdf.

things, polluted drinking water, spoiled vaccines, unhealthy food supplies exposure to dangerous and/or life threatening heat or cold, and other adverse results.⁵ Indeed, some of the opposition to the Transport Rule and other proposed rules may have been avoided had consultations begun earlier. The DEP believes that EPA's future revisions to the Transport Rule and all the other power sector rules under consideration will be better informed by consultations with FERC, RTOs, ISOs and other Planning Authorities to address electric grid reliability concerns.

Thank you for the opportunity to provide comments on the Staff White Paper on the Commission's Role Regarding Environmental Protection Agency's Mercury and Air Toxics Standards. Should you have questions or need additional information, please contact Vincent J. Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, by email at vbrisini@pa.gov or by telephone at 717.772.2724.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael L. Krancer', with a stylized, flowing script.

Michael L. Krancer
Secretary

⁵ See <http://www.bt.cdc.gov/disasters/poweroutage/needtoknow.asp>