

Congress of the United States

Washington, DC 20515

November 24, 2014

The Honorable Cheryl A. LaFleur
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Chairman LaFleur:

We write to seek clarification regarding the extent of consultation and coordination between the Federal Energy Regulatory Commission (FERC or Commission) and the Environmental Protection Agency (EPA) as EPA developed its proposed “Clean Power Plan” regulation for existing power plants and other recent major rulemakings that bear on electric reliability. We also request that the Commission convene a technical conference and invite the Department of Energy (DOE), the National Association of Regulatory Utility Commissioners (NARUC), affected asset owners and other relevant stakeholders to go on the record with respect to the reliability challenges posed to the Bulk Power System (BPS) by this proposal and other pending and forthcoming major federal environmental regulations.

The North American Electric Reliability Corporation (NERC) – the organization tasked with ensuring the reliability and adequacy of the BPS – recently released its Initial Reliability Review on the *Potential Reliability Impacts of EPA’s Proposed Clean Power Plan*, which identified a number of factors that require additional consideration for reliability purposes.¹ These include questioning whether EPA has properly estimated fossil fuel-fired generation retirements; noting that the assumed heat rate improvements for existing generation may be difficult to achieve; stating that additional infrastructure may be needed to accommodate a greater than anticipated reliance on variable resources and natural gas-fired generation; highlighting EPA’s projections of energy efficiency growth rates as unrealistic; warning that Essential Reliability Services such as load balance and frequency support may be strained; and stressing the critical need for additional compliance time.

Although this reliability assessment is the objective, non-partisan analysis Congress expects from the ERO, the EPA appears determined to “shoot the messenger” in order to ignore

¹ In the Energy Policy Act of 2005, Congress legislatively established the Electric Reliability Organization (ERO) to ensure the reliability and adequacy of the BPS. As the nation’s ERO, NERC continually monitors the BPS, develops and enforces mandatory reliability and cyber security standards, and conducts seasonal and long-term reliability assessments. NERC also undertakes comprehensive reliability assessments to evaluate current or proposed major regulatory or legislative changes that could impact the reliability of the BPS in order to advise policy decision-makers and industry.

the message. In response to NERC's initial assessment, EPA has insisted that its proposal "would not raise significant concerns over regional resource adequacy or raise the potential for inter-regional grid problems. Any remaining local issues would be managed, as they are today, through standard reliability planning processes."² The EPA further complained that NERC "did not do any new analysis....This approach ignores factors that are important for electric reliability, including new capacity that is either under construction, planned or likely by 2020."³

EPA lacks the mission and the expertise to determine what is necessary to maintain the reliability of the nation's electric grid. Indeed, Congress specifically established the *Electric Reliability Organization* for this very purpose. Although EPA may attempt to dismiss any potential reliability problems as merely "local," it does not define "local" or acknowledge that a "local" problem could be as large as a major metropolitan region or that a "local" reliability issue could quickly escalate into a regional blackout as in the Northeast in 2003 and the Southwest in 2011. Moreover, EPA itself has never performed an analysis of the cumulative impacts its recent electricity-related rules would have on reliability, nor has it sought, as part of its due diligence, such a cumulative analysis from NERC, FERC, or DOE.⁴

To date, the Administration has ignored the Government Accountability Office's (GAO) 2012 recommendation that the relevant federal agencies – DOE, FERC, and EPA – establish a "formal, documented process for jointly and routinely monitoring industry's progress [because] absent such a process, the complexity and extent of potential reliability challenges may not be clear to these agencies." This is unacceptable. At the Senate Energy and Natural Resources Committee's April 10, 2014 reliability hearing, there was widespread support among the witnesses that such a formal, documented process should be established.⁵ At that hearing, you maintained that FERC should be consulted early in the rulemaking process:

as [EPA] rules are developed [FERC] need[s] to be commenters in the draft stage...to make sure that those rules are achievable while reliability can be

² Darius Dixon, *LaFleur sees FERC focus on grid reliability under EPA carbon rule*, Politico Pro, November 7, 2014.

³ *Id.*

⁴ See U.S. Senator Lisa Murkowski, *Powering the Future: Ensuring that Federal Policy Fully Supports Electric Reliability* (Feb. 2014) at 11-13.

⁵ *Keeping the Lights On – Are We Doing Enough to Ensure the Reliability and Security of the U.S. Electric Grid? Before the S. Comm. on Energy and Nat. Resources*, 113th Cong. (April 10, 2014)(responses to Sen. Murkowski Questions for the Record: Commissioner Moeller, "A formal and documented role would be subject to rigor and transparency, as compared to vague claims that EPA is talking to individuals"; Jim Hunter, IBEW, "Yes. EPA's role is to look at pollution not reliability of the electric system"; NARUC, AR Commissioner Honorable, "NARUC has not taken a position on this specific question, but personally speaking, yes...I would advocate the inclusion of State utility Commissioners as well"; Nicholas Akins, AEP, "Yes. Our recent experience with EPA's rulemaking process has revealed several limitations on the ability to meaningfully coordinate interagency reviews and properly evaluate potential impacts on grid stability"; Sue Kelly, APPA, "Given the impact that EPA's regulations could potentially have on electric reliability due to plant retirements, shutdowns for retrofits, and shifting resource portfolios, FERC and NERC should have a formal role in these rulemakings"; Craig Glazer, PJM, "FERC and NERC should have the formal documented role in any EPA rulemaking process with RTOs/ISOs and other system operators providing input to all of these entities, including EPA").

preserved and then look at our knitting how, if you look at the greenhouse gas rules, they could potentially make changes for the markets and the infrastructure, make sure we're doing what we need to do to support reliability as those rules come in.⁶

Specifically with respect to the Clean Power Plan, EPA has asserted that it closely consulted with FERC as it developed the proposal.⁷ However, in recent testimony before the House Energy and Commerce Committee, you explained that “EPA did not request written advice or analysis regarding the potential impacts of the [proposed Clean Power Plan] on the reliability of the electric grid.”⁸ Further, Commissioners Moeller, Norris, Clark and Bay each indicated that they had not been consulted regarding the proposal before its issuance.⁹ And earlier this month, you were quoted as stating that you “really see a role for FERC in helping to ensure that reliability is sustained while people comply... [and that] the proposed rules should have a reliability backstop in them.”¹⁰

Accordingly, we have two requests. First, we want to learn as expeditiously as possible the extent and nature of meetings, communications, and consultations of any kind between FERC and EPA over the last eighteen months regarding the Clean Power Plan or any other major EPA regulations that bear on the reliability of the BPS. Our purpose is to establish the record of consultations that have taken place and to understand the details of the discussions, their results and the plan for future interactions. We have asked our staffs to follow up with specific questions in this respect. Please appoint Michael Bardee, the Director of the Office of Electric Reliability to lead this discourse.

Second, we request that FERC convene a technical conference to hear formally from DOE, the sector-specific agency with responsibility to assure adequate energy supplies, and other relevant stakeholders so that FERC may examine the significant concerns, as identified by NERC's report, that EPA's Clean Power Plan presents for grid reliability. A technical conference conducted in December or as soon as practicable after EPA's December 1 deadline for comments on the Clean Power Plan will have the benefit of highlighting aspects of the record. The conference should also cover other pending or forthcoming major federal environmental

⁶ *Id.* Hearing Transcript at 73-74.

⁷ See *EPA's Proposed Carbon Dioxide Regulations for Power Plants Before the H. Subcomm. on Energy and Power, Comm. on Energy and Commerce*, 113th Cong. (June 19, 2014). EPA Acting Assistant Administrator, Janet McCabe testified that “I or my staff have consulted with staff at FERC. They are part of the interagency review process that we always go through, and so they have given us their input on electric reliability.” *Id.*

⁸ *FERC Perspectives: Questions Concerning EPA's Proposed Clean Power Plan and other Grid Reliability Challenges Before the H. Subcomm. on Energy and Power, Comm. on Energy and Commerce*, 113th Cong. (July 29, 2014) (responses of FERC Chairman LaFleur to Preliminary Hearing Questions).

⁹ *Id.* Responses to Preliminary Hearing Questions, Question 1.a: Commissioner Moeller (“I have had no consultations with EPA on its proposal”); Commissioner Norris (“To date, I have not consulted with EPA regarding the Proposal”); Commissioner Clark (“EPA did not consult with me”); and Commissioner Bay (“In my duties as the Director of the Office of Enforcement, I have not had any consultation with EPA regarding the proposal”).

¹⁰ Dixon, *supra*.

regulations that may impact the reliability of the electric grid. Such a conference would begin to mitigate EPA's failure to engage FERC and other relevant agencies in the formal, documented process advocated by GAO.

Thank you for your consideration. Should you have any questions about these requests please contact Kellie Donnelly (202-224-4971), or Patrick Currier (202-225-2927).

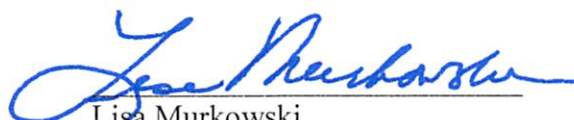
Sincerely,



Fred Upton
Chairman
Energy & Commerce Committee
U.S. House of Representatives



Ed Whitfield
Chairman
Subcommittee on Energy & Power
U.S. House of Representatives



Lisa Murkowski
Ranking Member
Energy & Natural Resources Committee
U.S. Senate