

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426



*Office of Commissioner Tony Clark*

January 12, 2015

The Honorable Lisa Murkowski  
Chairman  
Committee on Energy and Natural Resources  
United States Senate  
Washington, DC 20510

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, DC 20515

The Honorable Ed Whitfield  
Chairman  
Subcommittee on Energy and Power  
United States House of Representatives  
Washington, DC 20515

Dear Senator Murkowski, Representative Upton, and Representative Whitfield:

Thank you for your interest in our work at the Federal Energy Regulatory Commission (FERC), and for providing me with an opportunity to express my views. Enclosed are my responses to questions that I received from you on December 22, 2014.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tony Clark", written over a light blue horizontal line.

Tony Clark

*1/12/15 Responses of Commissioner Tony Clark*

1. EPA officials have asserted that staff at FERC actively participated in the development of the Clean Power Plan proposal. Are you aware of, or have you or your staff personally participated in, any meetings or conversations that would support EPA's view of FERC's participation?

Answer: Neither I nor my staff participated in meetings or conversations that would support the contention that FERC actively participated in the development of the Clean Power Plan (CPP). With regard to FERC staff generally, I believe it unreasonable to conclude that FERC meaningfully or substantially participated in the plan's development.

2. Given the December 3 correspondence and the attachments, what, if anything, can you tell us about the nature and subject matter of any or all of the listed meetings?

Answer: Given that neither I nor my staff participated in the meetings, I cannot speak first-hand about the nature or subject matter of the listed meetings. However, the December 3 correspondence corroborates previous discussions I have had with FERC staff, in which they described FERC input to EPA as a handful of high-level, general discussions based on a limited review of only portions of the CPP proposal that were provided to FERC.

3. Based on the December 3 correspondence, what conclusions, if any, do you draw concerning the quality and impact of FERC's interaction with EPA as it relates to ensuring that EPA rules do not unduly burden electric reliability?

Answer: As I noted previously, I believe it would be incorrect to suggest that FERC and its staff have had a significant or meaningful role in providing EPA the sort of detailed, technical analysis that will be required to ensure the CPP does not impact grid reliability. According to the information supplied by Chairman LaFleur, FERC staff only discussed the CPP with EPA staff on five occasions prior to the release of the CPP on June 2, 2014, and on only three occasions since its release.

Altogether, the limited input provided by FERC staff to the EPA and the lack of input from the Commissioners reinforces the notion that the meetings with EPA were insubstantial in shaping the CPP proposal and mitigating potential reliability impacts. Nothing I have seen before or since would suggest otherwise.

In the case of the Mercury and Air Toxics Standards,<sup>1</sup> the Commission is positioned to advise EPA on reliability issues created by the rule and recently did

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<sup>1</sup> *Policy Statement on the Commission's Role Regarding the Environmental Protection Agency's Mercury and Air Toxics Standards*, 139 FERC ¶ 61,131 (2012).

so in relation to a request for administrative order filed by the Kansas City Board of Public Utilities.<sup>2</sup>

4. To your knowledge, was FERC staff permitted access to EPA documents and proposals or otherwise afforded an opportunity for considered interaction on the substance of the Clean Power Plan proposal?

Answer: It is my understanding that FERC staff was allowed to review a portion of the CPP before its release. As described in Chairman LaFleur's December 3 response letter, during an April 23, 2014 telephone conference, FERC staff provided feedback to the EPA on potential reliability concerns with the draft CPP proposal, including concerns related to EPA's building blocks and the need for a reliability safety valve. While I subsequently received a description of FERC staff's meeting, I am not aware of the extent to which FERC staff's suggestions were taken into account by the EPA before the CPP proposal was released.

5. Other than through the announced technical conferences, do you yourself presently anticipate future involvement with EPA before the Clean Power Plan rule or any other pending major EPA rulemaking that in your judgment is likely to bear on electric reliability is made final?

Answer: In the short term, I anticipate the Technical Conferences on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure in FERC Docket No. AD15-4-000 (Technical Conferences) will be the primary avenue for me to individually raise and pursue concerns with the EPA about grid reliability and impending EPA regulations. In addition, I will continue to discuss these matters in my interactions with Congress. I also regularly interact with state officials and policymakers, utility operators and others across the public and private sectors on these matters through a number of formal and informal venues. With regard to substantive inter-agency dialogue, I stand willing and able to provide input, but because it is the EPA that is seeking to promulgate this rule, it is the EPA that will have to decide how and to what degree it will solicit and take into account the input of FERC Commissioners.

6. At this time are you aware of any established or forthcoming plan by EPA or the FERC staff to include you or your staff in substantive inter-agency interactions on these matters?

Answer: No, not beyond the established Technical Conferences.

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<sup>2</sup> *Kansas City Bd. of Pub. Util.*, 149 FERC ¶ 61,138 (2014).

7. Based upon your personal knowledge, in its interactions with EPA concerning proposed or final major EPA rules that bear on electric reliability, has FERC acted adequately to protect electric reliability? If your answer is yes, please identify the facts that support your view.

Answer: To the degree the U.S. has not had a major reliability event related to the implementation of EPA rules, and to the extent that Commissioners and FERC staff have advocated for a reliability safety valve, it could be stated that FERC has acted to promote reliable grid operations. Yet FERC has not previously had to deal with widespread reliability issues triggered by EPA regulations because those regulations have historically been imposed during a time of generous electricity capacity reserves nationwide. Unfortunately, this is a luxury we no longer have.

In many regions of the country once-plush reserve margins are shrinking dramatically as traditional sources of baseload generation are retiring in substantial numbers. FERC is seeing a raft of dockets related to capacity challenges, indicating that the grid is operating with much less room for error.

While FERC is not the agency that imposes the environmental regulations that are so affecting the grid, it is FERC that has to deal with the real world implications of those regulations. In a situation where there is inadequate generation capacity to meet demand, regulators are faced with the unenviable task of choosing between allowing prices to rise to their natural equilibrium point, or letting reliability suffer through more forced load-shed events. Because reliability coordinators, grid operators, and regulators seek to avoid widespread load-shed events, consumers can expect to see more frequent price increases as reserve margins shrink to inadequate levels. This is why I have said that reliability and price are two sides of the same coin. Through various mechanisms and cases that have come before the Commission, I have attempted to make decisions that put reliability first in order to protect the public interest. At the same time, these can sometimes be decisions that are politically unpopular because they may entail higher prices for consumers. Yet as a regulator of public utilities that are directly impacted by far-reaching environmental regulations and ever-changing economic conditions, these are the tough decisions that have to be made if electric reliability is to be maintained for the good of consumers.