

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF THE COMMISSIONER

October 7, 2011

The Honorable Lisa A. Murkowski
United States Senator
Committee on Energy and
Natural Resources
Washington, D.C. 20510-6150

Dear Senator Murkowski:

Thank you for your letter of September 19, 2011, and for the opportunity to share with you my thoughts on initiating a formalized process with the North American Electric Reliability Corporation (NERC) to assess the intersection of reliability compliance and environmental compliance.

Reliability compliance and environmental compliance are critical matters for the nation and its consumers and it is imperative that we get these issues right. Thus, it is not surprising that there has been much debate over the how the Environmental Protection Agency's (EPA) proposed regulations may impact the nation's electric grid. The regulated entities (whether the Independent System Operator or Regional Transmission Organization (ISO/RTO) or local utilities) are in the best position to evaluate the cumulative impact of the EPA's proposed regulations on reliability and what needs to be done to ensure that compliance with those rules will not hinder the reliable operation of the transmission grid.

The Southwest Power Pool's (SPP) letter to the EPA Administrator dated September 20, 2011, is an example of the role the regulated entities can play in evaluating the impact of the rules on reliability. The SPP sent its letter in its capacity as a Commission-approved Regional Transmission Organization and as a Regional Entity. Once the regulated entities demonstrate the potential effect of the new rules on reliability, as done by the SPP, the result of their analyses must be considered in the context of the EPA's proposed regulations. The record on which the EPA bases its regulations should consider these important facts and analyses. The technical conference the Commission announces today in Docket No. AD12-1-000 will provide another forum for regulated entities to indicate the impact the anticipated environmental rules will have on system reliability.

Under Section 215 of the Federal Power Act, the Commission is statutorily mandated to ensure reliable wholesale electric service is provided at just and

reasonable rates. Reliable service of electricity is essential to the health, welfare, and safety of the American people and necessary to serve our economy.

The electric industry recognizes its obligation to comply with both environmental regulations and Commission-approved reliability standards and to plan their systems to reliably serve consumers while satisfying environmental requirements. As demonstrated by the SPP letter mentioned above, the regions are already analyzing the potential impact of the proposed environmental regulations. I do not believe that a generic review of the EPA's proposed regulations would disclose identical impacts on all regions. Planning decisions are typically made at the local or state level and their processes should play a role in compliance with the EPA's proposed regulations. The regulated entity, therefore, is the appropriate entity to do this review.

Regulated entities must have adequate time to plan their systems to comply with the rules that the EPA promulgates and the Commission-approved reliability standards. As the SPP discusses, inadequate time to comply with the EPA's proposed regulations may result in the users, owners and operators of the bulk-electric system being compelled by their government to choose between compliance with environmental laws or with Commission-approved reliability standards, and then face a penalty from one of the agencies. Regulated entities should not be put in the position of having to elect which agency's penalty they would rather face.

Also, I continue to support the "reliability safety valve" proposal proffered by certain of the ISOs/RTOs in comments to the EPA. A "reliability safety valve" would permit case-specific extensions of time for environmental compliance by a generator that is critical to the reliable operation of the grid. However, I envision the "reliability safety valve" as a tool to use after regulated entities are first given adequate time to comply with the EPA's proposed regulations. Providing regulated entities adequate time to comply with the EPA's proposed regulations will enable them to plan changes to their systems in a way that should minimize instances in which a "reliability safety valve" would be needed. For example, the need for a "reliability safety valve" may be high if an entity only has one year to comply with the EPA's proposed regulations, but the need diminishes if the entity has three or five years to comply and makes changes to its system during those years to fill the void that may be left if a critical unit is retired. Yet, notwithstanding an adequate compliance period, there still may be generators that are not in compliance with an environmental requirement but remain critical for the reliability of the grid. Given the importance of the reliability of the grid, we should adopt a "belt and suspenders" level of protection that allows for adequate compliance time and the failsafe of a "reliability safety valve" for critical units. An adequate compliance period coupled with a "reliability safety valve" for

critical units would best ensure that regulated entities are not faced with a Hobson's choice that neither serves consumers nor results in good government.

My answers to your specific questions are attached. I thank you for the opportunity to express my thoughts on these important issues. I hope the foregoing discussion has been responsive to your letter, and I invite any further questions or comments on this critical matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Marc Spitzer', with a long, sweeping horizontal stroke extending to the right.

Marc Spitzer
Commissioner
Federal Energy Regulatory Commission

Attachment

**The Honorable Lisa A. Murkowski
United States Senator
Committee on Energy and
Natural Resources**

**Commissioner Marc Spitzer's Responses
to
Senator Murkowski's Questions
dated September 19, 2011**

Question 1: Will EPA's rulemaking agenda, as described in my previous correspondence, degrade reliability in any region, sub-region or electric control area of the United States? In addition to answering this question, please state or explain:

- a. the basis for this determination;**
- b. your degree of confidence in this determination;**
- c. the regions, sub-regions, or electric control areas that will be affected, with a particular focus on transmission "pockets" and cities where generating capacity is at risk;**
- d. the impacts on system stability or system recovery in the aftermath of wide scale forced outages (e.g., the recent regional outage in Arizona, Southern California, and New Mexico);**
- e. the impact on reliability of any change in the balance among different types of generation, particularly during and in the aftermath of forced outages and periods of peak demand; and**
- f. the actions that the Commission is undertaking to understand and address these effects.**

Answer: I have no further information to add to the response provided by Chairman Wellinghoff.

Question 2: In your view, what is the extent of the Commission's responsibility to ensure the reliability and security of the nation's bulk power system? In this regard, please describe and what actions by the Commission it may entail.

Answer: I have no further information to add to the response provided by Chairman Wellinghoff.

Question 3: What process will the Commission undertake to assess the impact on reliability of EPA's rulemaking agenda? With respect to this process, please describe:

- a. the scope of the process;**
- b. the projected timeline for any contemplated activities;**
- c. the division of responsibility between the Commission, NERC, and any other entity;**
- d. any contemplated studies or projections; and**
- e. the agencies and officials participating.**

Answer: I agree with the response provided by Chairman Wellinghoff. I also note the Commission has announced a conference that will provide another forum for regulated entities to indicate the impact the anticipated environmental rules will have on system reliability.

Question 4: As a matter of public policy, do you believe that federal regulations should be generally applicable?

Answer: I have no further information to add to the response provided by Chairman Wellinghoff.

Question 5: Do you intend to involve the Commission in the EPA's rulemaking process sufficiently to ensure that EPA's rules, in fact, can be generally applicable without a threat to reliability?

Answer: Once the regulated entities demonstrate the potential effect of the new rules on reliability, as done by the SPP, the result of their analyses must be considered in the context of the EPA's proposed regulations. The record on which the EPA bases its regulations should consider these important facts and analyses. The technical conference the Commission announces today in Docket No. AD12-1-000 will provide another forum for regulated entities to indicate the impact the anticipated environmental rules will have on system reliability.

Question 6: If, de facto, EPA's rules are less than generally applicable because they require significant exceptions and waivers to meet reliability requirements, please explain the process you believe should apply. Please describe any proposals for such a waiver or exception that that might serve as a "safety valve" that you may have under review, or that you believe may be under review by EPA or any other Executive Agency, for permitting certain power plants to operate under the EPA rules until mitigation measures are put in place to safeguard reliability considerations. Please detail the elements of such a process for providing flexibility or targeted and discrete exceptions

or waivers. If such a process would include the use of consent decrees entered in judicial proceedings, please explain how such a process might operate.

Answer: I agree with Chairman Wellinghoff that a “safety valve” should be implemented. However, I envision the “reliability safety valve” as a tool to use after regulated entities are first given adequate time to comply with the EPA’s proposed regulations. Providing regulated entities adequate time to comply with the EPA’s proposed regulations will enable them to plan changes to their systems in a way that should minimize instances in which a “reliability safety valve” would be needed. For example, the need for a “reliability safety valve” may be high if an entity only has one year to comply with the EPA’s proposed regulations, but the need diminishes if the entity has three or five years to comply and makes changes to its system during those years to fill the void that may be left if a critical unit is retired. Yet, notwithstanding an adequate compliance period, there still may be generators that are not in compliance with an environmental requirement but remain critical for the reliability of the grid. Given the importance of the reliability of the grid, we should adopt a “belt and suspenders” level of protection that allows for adequate compliance time and the failsafe of a “reliability safety valve” for critical units. An adequate compliance period coupled with a “reliability safety valve” for critical units would best ensure that regulated entities are not faced with a Hobson’s choice that neither serves consumers nor results in good government.

Question 7: Please provide any estimate that you or any Commissioner or Commission employee may have developed with respect to the number of generating units that could qualify for such flexibility or targeted and discrete exceptions or waivers.

Answer: I have no further information to add to the response provided by Chairman Wellinghoff. I have not conducted an estimate with respect to the number of generating units that could qualify for such flexibility or targeted discrete exceptions or waivers.

Question 8: If you expect that completing a reliability assessment of the cumulative impact of EPA’s rulemaking agenda in general – or of the Utility MACT or Cross State Air Pollution rules in particular – will require more than six months, please explain in detail the objectives of the assessment, its methodology, and the time necessary to complete each step. In addition, please explain why it would be infeasible to release an assessment within six months’ time.

Answer: I have no further information to add to the response provided by Chairman Wellinghoff.

Question 9: If the Commission is not undertaking such a process, and has no plans to do so, please either:

- **affirm that EPA's rulemaking agenda will not materially degrade reliability in any location within the United States; or**
- **explain how the Commission will carry out its statutory obligations with respect to reliability and security in the absence of information regarding expected material degradations to reliability.**

Answer: I have no further information to add to the response provided by Chairman Wellinghoff.