FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF THE COMMISSIONER

October 7, 2011

The Honorable Lisa A. Murkowski
United States Senate
Washington, DC 20510

Dear Senator Murkowski:

Thank you for your letter of September 19 concerning the potential reliability impacts of the Environmental Protection Agency (EPA) rulemaking initiatives. Please find enclosed my responses to your questions for the Commission.

I am aware that Chairman Wellinghoff and Commissioner Moeller have been in contact with your office in order to set up a meeting to discuss these issues. I have also requested a meeting, together with Commissioner Norris. As I explained to Patrick McCormick, I would very much appreciate the opportunity to meet with you and/or your staff in person to discuss your concerns. Thank you very much.

Sincerely.

Cheryl A. LaFleur

cc: Patrick McCormick

Questions and Responses

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 Northern 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: *As I recently stated in my testimony before the House Subcommittee on Energy and Power (attached), the EPA regulations are not expected to affect our resource adequacy as a nation. However, I believe that it is possible that the regulations may present reliability issues in particular localities or regions. While in some areas, a retirement, or even several retirements related to the new EPA regulations will not create a reliability concern, in other areas, the retirement of even a single unit may create the need for an alternative.*

As I also noted in that prior testimony, the decision to retrofit or retire is dependent on facts and judgments that are specific to each unit. Therefore, while it is possible for a state or regional planning authority to model different retirement scenarios, these scenarios are based on assumptions that cannot account for the highly sensitive and confidential financial information that a unit owner is likely to rely on in making its decision. I believe that the most meaningful assessment of the reliability implications of the EPA regulations can be made at the regional and local level as generation owners make the decisions whether to retrofit or retire specific power plants.

I expect that the Commission can and will be involved in helping to resolve reliability issues arising from any individual retirements. Further, as I stated before the House Subcommittee, I believe that it would be helpful for FERC to organize a "workshop" (or series of workshops) to explore the tools available to address any reliability impacts from potential retirements. Inote that the

Commission is planning to hold a reliability conference on November 29-30 which will include a discussion of the tools and processes (including tariffs and market rules) available to address any identified reliability concerns from the EPA regulations. I have attached the public notice of the conference that the Commission issued today.

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 that responsibility and what actions by the Commission it may entail.

Answer: *Under section 215 of the Federal Power Act, the Commission has responsibility for the reliability of the bulk power system by overseeing the Electric Reliability Organization's (ERO) development and implementation of mandatory reliability standards, and enforcing those standards. Section 215 establishes a paradigm by which both the Commission and the ERO are responsible for identifying reliability issues—the ERO through its Reliability Standards development process, where it can independently identify areas of concern and develop Standards to address them; and the Commission through its review of proposed Reliability Standards and authority to direct modifications or new Standards that address specific issues necessary to effectuate the purposes of section 215.*

Further, under section 207 of the Federal Power Act, if the Commission finds that any interstate service of a public utility is inadequate or insufficient, it has the authority to "determine the proper, adequate, or sufficient service to be furnished." The Commission has used Section 207 to order two public utilities to file a long-term plan for transmission upgrades to address reliability concerns in the nation's capital. District of Columbia Public Service Commission, 114 FERC ¶ 61, 017 (2006).

I believe that FERC can play an important role in discussions among regional planning authorities, regional reliability entities, the North American Electric Reliability Corporation, utilities, states, and the EPA. While FERC does not have authority to require utilities to build generation or transmission capacity for the adequacy of electric facilities or services, it does oversee market rules and grid operations and can use its authority to help ensure that planning processes allow utilities and planners to assess reliability issues as early as possible, so that adequate measures can be put into place to assure grid reliability.

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: *To the extent this question relates to the actions of FERC staff, I defer to the answer from Chairman Wellinghoff. See my answer to Question 2 above.*

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

Answer: *As a general rule, yes.*

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: *Because this question relates to the actions of FERC staff, I defer to the answer from Chairman Wellinghoff.*

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 process 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 am not personally aware of any specific waiver or exception processes that are under review by the Commission at this time. However, as I noted in my recent testimony before the House Subcommittee on Energy and Power, if a retirement does create a potential reliability issue, the unit owners, in conjunction with state and regional planning authorities, must determine what resources will replace the unit, how long it will take to bring the replacement resources into service, and what to do in the interim.*

As I further testified, given the lead times for certain types of resources, there may be a gap of time when a replacement facility is not available, but the retiring unit is no longer compliant with EPA regulations. In such cases, a time-limited waiver of EPA regulations may be needed. It is possible that in some cases, a "reliability

must-run" (RMR) contract may be required in order to allow the power plant to operate within certain discrete parameters for a limited period of time.

Moreover, as you are aware, on August 4, 2011, ERCOT, MISO, NYISO, PJM, and SPP jointly filed comments to the EPA in the proceeding on National Emission Standards for Hazardous Air Pollutants requesting the incorporation of a "reliability safety valve." The purpose of this safety valve proposal is to extend the time for compliance until alternative resources are in place to address the reliability issue created by the shutdown of a "reliability critical unit."

As noted previously, I understand that the Commission is planning to hold a reliability conference on November 29-30 which will include a discussion of the tools and processes (including tariffs and market rules) available to address any identified reliability concerns from the EPA regulations.

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 not developed such an estimate. To the extent that this question relates to the actions of FERC staff, I defer to the answer from Chairman Wellinghoff.*

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 understand that the North American Electric Reliability Corporation (NERC) is in the process of updating its 2010 assessment on the potential resource adequacy impacts of the EPA regulations and expects to have the revised assessment completed in November 2011. Further, as I have started previously, the EPA regulations are not expected to affect our resource adequacy as a nation. Rather, I believe that the reliability consequences of any potential retirements will be dependent on the specific facts of each case, each locality, and each region.*

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: *Because I believe that the final regulations may present reliability issues in particular localities or regions, I cannot affirm that EPA actions will not impact reliability in any location within the United States. I believe that FERC can play an important role in helping regional planning authorities, regional reliability entities, the North American Electric Reliability Corporation, utilities, states, and the EPA to identify and address specific local and regional issues. I believe FERC can help in the development and refinement of planning tools to address such issues.*

As I have previously stated, I believe we as a nation can help ensure that environmental regulations do not adversely affect reliability by assuring coordination and flexibility in their implementation.

Testimony of Commissioner Cheryl A. LaFleur
Federal Energy Regulatory Commission
Before the House Subcommittee on Energy and Power
Of the Committee on Energy and Commerce
United States House of Representatives

September 14, 2011

Chairman Whitfield, Ranking Member Rush, and members of the Subcommittee:

Thank you for the opportunity to testify.

My name is Cheryl LaFleur, and 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 just how important electric reliability is to real people and real communities. Since joining the Commission a little over a year ago, I have made reliability one of my top priorities. I appreciate the opportunity today to discuss the potential impact the EPA's regulations may have on electric reliability.

For some time now, we have been hearing about the EPA's proposed air and water regulations and their potential to affect our energy supply. Although not all of these regulations are final, I believe it is 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 compliance obligations, among other factors, in determining whether it is economically feasible to retrofit or repower a unit, or whether it makes economic sense to retire the unit.

The decision to retrofit or retire is dependent on facts and judgments that are specific to each unit. While it is possible for a state or regional planning authority to model different

retirement scenarios, these scenarios are based on assumptions that cannot account for the highly sensitive and confidential financial information that a unit owner is likely to rely on in making its decision.

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 or regional planning authority of its decision. The regional planning authority must then determine the reliability implications of the retirement and consider next steps: (1) is there enough available generation and/or transmission to allow the unit to retire without adversely affecting reliability, or (2) will the retirement create the need for new generation, transmission, or other resources (such as demand-side resources) in order to maintain reliability?

Like a unit owner's decision to retrofit or retire, 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 resource adequacy as a nation, they may present reliability issues in particular localities or regions. In some regions, conditions may be such that a retirement, or even several retirements related to the new EPA 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 do not require the extensive number of assumptions required for a nation-wide analysis and are more likely to identify the regions that may face reliability concerns.

If a retirement does create a potential reliability issue, the unit owners, in conjunction with state and regional planning authorities, must determine what resources will replace the unit, how long it will take to bring the replacement resources into service, and what to do in the interim. Given the long lead times for certain types of resources, there may be a gap of time when a replacement facility is not available, but the retiring unit is no longer compliant with EPA regulations. In such cases, a time-limited waiver of EPA regulations may be needed. In some cases, a "reliability must-run" (RMR) contract may also be needed to allow the power plant to operate within certain discrete parameters for a limited period of time.

It is important to note that the process I just described is not unique to potential retirements related to the EPA's regulations. State and regional planners have used, and continue to use, this general process for any retirement, including those driven primarily by market conditions. The EPA regulations are significant in that they present the potential for significant retirements in the same timeframe. As I have said, however, whether and how this affects reliability is dependent on the highly specific facts present in each region and locality.

Once the local reliability considerations of a particular unit's retirement are known, there will need to be flexibility in specific cases. I believe that the EPA should and does understand this issue.

I do believe, however, 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 nation-wide estimates. The circumstances of each retirement and need for replacement facilities are fact-specific. I do not personally support a blanket delay of EPA regulations, but will certainly champion specific extensions where needed for reliability.

Because of our jurisdiction over regional transmission planning, utility rates, and reliability standards, FERC should be actively involved in these issues when they arise. I believe that FERC can play an important role in discussions among regional planning authorities, regional reliability entities, the North American Electric Reliability Corporation, utilities, states, and the EPA. While FERC does not have authority to require utilities to build generation or transmission capacity for the adequacy of electric facilities or services, it can use the authority and expertise it does have to help ensure that planning processes allow utilities and planners to assess reliability issues as early as possible, so that adequate measures can be put into place to assure grid reliability.

For example, FERC can examine and approve market rules designed to facilitate reliability. In this regard, the Commission has previously approved locational pricing and forward capacity markets as mechanisms to send price signals about where and when new supply resources are needed. I believe that these market constructs, while not present in all parts of the country, properly price the marginal value of capacity and help to mitigate the concerns that would arise in their absence. I also believe that it would be helpful for FERC to sponsor a workshop (or series of workshops) that brings together states, utilities, regional authorities, and other stakeholders to discuss the impacts of the EPA regulations and assess what tools we collectively have at our disposal. As my remarks suggest, I believe we should focus on ensuring that planners have the tools to respond to local and regional reliability issues.

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

Thank you very much.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Reliability Technical Conference Docket No. AD12-1-000

NOTICE OF TECHNICAL CONFERENCE

(October 7, 2011)

Take notice that the Federal Energy Regulatory Commission will hold a Technical Conference on Tuesday, November 29, 2011, from 1:00 p.m. to 5:00 p.m. and Wednesday, November 30, 2011, from 9:00 a.m. to 4:00 p.m. This Commissioner-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The conference will be open for the public to attend, and advance registration is not required.

The purpose of the conference is to discuss policy issues related to reliability of the Bulk-Power System. The conference will explore the progress made on the priorities for addressing risks to reliability that were identified in earlier Commission technical conferences. The conference also will discuss emerging issues, including processes used by planning authorities and other entities to identify reliability concerns that may arise in the course of compliance with Environmental Protection Agency regulations, and the tools and processes (including tariffs and market rules) available to address any identified reliability concerns.

The agenda for this conference will be issued at a later date. Information on this event will be posted on the Calendar of Events on the Commission's web site, www.ferc.gov, prior to the event.

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For more information about this conference, please contact:

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Deputy Secretary.