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4 HEARING ON ``THE AMERICAN ENERGY INITIATIVE'', IMPACTS OF THE
5 ENVIRONMENTAL PROTECTION AGENCY'S NEW AND PROPOSED POWER
6 SECTOR REGULATIONS ON ELECTRIC RELIABILITY
7 WEDNESDAY, SEPTEMBER 14, 2011
8 House of Representatives,
9 Subcommittee on Energy and Power
10 Committee on Energy and Commerce
11 Washington, D.C.

12 The Subcommittee met, pursuant to call, at 9:18 a.m., in
13 Room 2322 of the Rayburn House Office Building, Hon. Ed
14 Whitfield [Chairman of the Subcommittee] presiding.

15 Members present: Representatives Whitfield, Shimkus,
16 Walden, Terry, Burgess, Bilbray, McMorris Rodgers, Olson,
17 McKinley, Gardner, Barton, Rush, Inslee, Markey, Green,
18 Capps, Doyle, Castor and Waxman (ex officio).

19 Staff present: Charlotte Baker, Press Secretary; Ray
20 Baum, Senior Policy Advisor/Director of Coalitions; Anita
21 Bradley, Senior Policy Advisor to Chairman Emeritus; Maryam
22 Brown, Chief Counsel, Energy and Power; Patrick Currier,
23 Counsel, Energy and Power; Garrett Golding, Professional
24 Staff Member, Energy; Cory Hicks, Policy Coordinator, Energy
25 and Power; Heidi King, Chief Economist; Mary Neumayr, Senior
26 Energy Counsel; Katie Novaria, Legislative Clerk; Jeff Baran,
27 Democratic Senior Counsel; Greg Dotson, Democratic Energy and
28 Environment Staff Director; Caitlin Haberman, Democratic
29 Policy Analyst; and Alexandra Teitz, Democrat Senior Counsel,
30 Energy and Environment.

|
31 Mr. {Whitfield.} This hearing will come to order. This
32 is the 12th day of our American Energy Initiative hearing,
33 and today we are going to focus on the impact of the EPA's
34 new and proposed power sector regulations and the reliability
35 of the electric power grid.

36 The Energy Information Administration projects that
37 electricity demand will increase 31 percent by 2035. That
38 means new electric power plants will more than likely have to
39 be built, and that includes all kinds of power plants. But
40 getting EPA approval to do so was already enough of a
41 challenge before utility MACT, new source performance
42 standards for greenhouse gases, interstate transport, cooling
43 towers, coal combustion residuals, and all the other new and
44 pending regulations were added to the mix. As it is, this
45 Administration has brought construction of new coal-fired
46 generation to a near standstill, and things are only going to
47 get harder as additional regulations take effect.

48 At the same time, existing facilities are under threat.
49 EPA's regulations are likely to force accelerated retirements
50 of many coal-fired plants that are still badly needed.
51 Studies from the North American Electric Reliability
52 Corporation and several others estimate serious risks to
53 reliability from these retirements.

54 Add to that the units facing significant downtime as
55 they are retrofit to comply with the host of new regulations,
56 and there is genuine concern whether there will be enough
57 electric generating capacity to meet the Nation's growing
58 demand. The impacts of more expensive electricity are bad
59 enough, and alone are reason to closely scrutinize the many
60 new regulations likely to raise them. But the potential
61 consequences of unreliable electricity, on the economy, on
62 the military and on the lives of the American people, are
63 even more disturbing.

64 We need to know the cumulative impact on reliability of
65 all the rules that are in the works in the pipeline, which is
66 precisely why the TRAIN Act, in our view, is so important.
67 This is a very serious problem, but I have yet to see serious
68 treatment of it by EPA. The agency has shown insufficient
69 concern over the cumulative burden of its regulations as it
70 moves ahead to implement them. This attitude of ``regulate
71 first, ask questions later'' needs to end.

72 Nor is the EPA coordinating with the Federal Energy
73 Regulatory Commission as well as other federal and State-
74 level organizations responsible for the reliability of the
75 grid. Needless to say, for EPA to embark on a regulatory
76 agenda that threatens reliability without working closely
77 with FERC and other federal agencies is simply unacceptable.

78 I know that 14 different entities have examined the
79 potential loss of energy-producing power, and they range
80 anywhere from almost 80 gigawatts down to 10 gigawatts, and
81 on the preliminary assessment, the lowest prediction of
82 retired capacity was EPA, but the mere fact that we have so
83 many different agencies with such different views on the
84 capacity impact certainly would illustrate that we need
85 better coordination on this issue.

86 And so I look forward today to learning more from the
87 leadership at FERC who are responsible for reliability on
88 precisely what their views are on this issue and how
89 comfortable they feel in assuring the American people that
90 reliability will not be an issue.

91 [The prepared statement of Mr. Whitfield follows:]

92 ***** COMMITTEE INSERT *****

|
93 Mr. {Whitfield.} At this time I would like to recognize
94 the gentleman from Illinois.

95 Mr. {Rush.} I want to yield, Mr. Chairman, to the
96 ranking member.

97 Mr. {Whitfield.} Okay. I will recognize the ranking
98 member, Mr. Waxman of California, for his opening statement.

99 Mr. {Waxman.} Thank you, Mr. Chairman, and thank you,
100 Mr. Rush, for the opportunity to make this opening statement.

101 This Republican House has been the most anti-environment
102 in history. And today's hearing builds on that unfortunate
103 record with yet another attack on EPA's efforts to reduce air
104 pollution.

105 The rules under assault today will improve the health of
106 millions of Americans. The first rule, the mercury and air
107 toxics rule, will prevent up to 17,000 premature deaths each
108 year. The benefits of this rule sharply exceed the costs by
109 as much as 13 to one.

110 The second rule, EPA's cross-state air pollution rule,
111 is also a tremendous victory for public health. Each year,
112 this rule will prevent up to 34,000 premature deaths. In
113 2014, this rule will cost \$800 million but will produce
114 annual health benefits to Americans of between \$120 billion
115 and \$280 billion. That is an outstanding return on

116 investment for the American people.

117 Earlier this year, when Republicans wanted to block
118 EPA's climate rules, they said they wanted to clean up other
119 air pollution, just not greenhouse gases. Yesterday, when
120 our committee voted to block air toxics rules for boilers and
121 cement kilns, they said they care about air pollution but
122 denied the health benefits from reducing air toxics such as
123 mercury. Now, they are attacking the cross-state air
124 pollution rule, which controls fine particulates. They
125 ignore the severe effects of particulates on health
126 documented in reams of peer-reviewed studies, and they claim
127 that the rules will force so many coal plants to shut down
128 that the reliability of our electric grid will be threatened.

129 Well, EPA examined this question and found that its
130 rules will result in only a modest level of retirements, of
131 older, dirtier, less efficient power plants, and that these
132 retirements are not expected to have an adverse impact on the
133 adequacy of electric generation. EPA's conclusions have been
134 confirmed by several independent studies.

135 In August 2010, the Analysis Group concluded that ``the
136 electric industry is well positioned to comply with EPA's
137 proposed air regulations without threatening electric system
138 reliability.'' And they reaffirmed this finding in a June
139 2011 report.

140 The Bipartisan Policy Center's June 2011 analysis of the
141 rules also found that ``scenarios in which electric system
142 reliability is broadly affected are unlikely to occur.'' In
143 a December 2010 study, Charles River Associates found that
144 ``implementing EPA air regulations will not compromise
145 electric system reliability.''

146 The Congressional Research Service and others have also
147 examined the issue. The stack of independent studies agrees
148 on the key points. First, there is currently a substantial
149 amount of excess generation capacity from natural gas plants
150 built during the last decade. The Analysis Group found that
151 the electric sector is expected to have over 100 gigawatts of
152 surplus capacity in 2013. That is much more capacity than
153 anyone has suggested might retire as a result of EPA's rules.

154 Second, the electric industry has a proven track record
155 of rapidly installing large amounts of new capacity when it
156 is needed. From 2000 to 2003, utilities added over 200
157 gigawatts of new capacity, and energy efficiency can often
158 reduce the amount of needed generation even faster.

159 Third, the potential retirements are of old, small,
160 inefficient, less-used coal plants that lack pollution
161 controls. On average, these units are 55 years old.
162 According to CRS, the main threat to these plants is cheap
163 natural gas. Regardless of EPA's rules, these old plants are

164 being replaced by more efficient natural gas plants.

165 Today, we will hear a lot about an informal assessment
166 by FERC's staff that 81 gigawatts of generation are likely to
167 close as a result of EPA's rules. Citing this assessment is
168 a mistake, as we will hear today from FERC's chairman. This
169 assessment was based on inaccurate assumptions and inadequate
170 data, and it is out of date. It does not reflect the final
171 EPA rules, as FERC has acknowledged.

172 The NERC and industry studies are also based on
173 inaccurate assumptions of what EPA rules would require. The
174 results are unreliable because they assumed standards far
175 more burdensome than those EPA adopted.

176 The reliability of the electric grid is a serious topic,
177 and it should not be used as an unfounded excuse to block
178 important public health protections.

179 Thank you, Mr. Chairman.

180 [The prepared statement of Mr. Waxman follows:]

181 ***** COMMITTEE INSERT *****

|
182 Mr. {Whitfield.} Thank you.

183 At this time I recognize the gentleman from Texas, Mr.
184 Olson, for his opening statement.

185 Mr. {Olson.} Thank you, Mr. Chairman. Thank you for
186 your leadership in hosting the 12th hearing of the American
187 Initiative.

188 When the Obama Administration's Environmental Protection
189 Agency blindsided Texas by including in its cross-state
190 pollution rule at the last minute, Texas utility companies
191 warned that the decision would lead to a shortage of
192 electricity, layoffs and higher energy prices. That was over
193 2 months ago. The EPA went full steam ahead with its
194 rulemaking despite these concerns, and now we have learned
195 that Luminant, the largest power generator in Texas, will
196 close Texas lignite mines, idle two power plants and lay off
197 500 people. Luminant is one of the latest victims of an
198 agency that is out of control. I hear it from my
199 constituents, other Members of Congress and even President
200 Obama himself when he withdrew a poorly drafted EPA ozone
201 rule that was bad for the economy.

202 Today, we will hear from public utility commissioners
203 and independent system operations. They are not here to make
204 a political statement. They are here to tell us that there

205 is no realistic way to even partially mitigate the
206 substantial losses of available operating capacity that will
207 result from this rule. Hopefully, members on both sides will
208 heed their message and work together to find a more sensible
209 solution.

210 I thank you, and yield to my colleague from Texas, the
211 chairman emeritus, Mr. Barton.

212 [The prepared statement of Mr. Olson follows:]

213 ***** COMMITTEE INSERT *****

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214 Mr. {Barton.} Thank you, Mr. Olson.

215 I want to welcome the FERC commissioners. I think it
216 has been a while since we have had all five of you, so we are
217 glad to have you.

218 It was interesting to me listening to Ranking Member
219 Waxman. His assessment seems to be that we just overreact to
220 all these EPA rules, that they are really not going to have
221 much of an impact and we just need to hug each other and
222 things will work out. Well, you folks are an independent
223 agency, and EPA says all their rules might require 10-
224 megawatt retirement. I think they say 10. You say 131.
225 Well, that is quite a difference. Even if you split the
226 difference, it is still approximately 70 megawatts. That is
227 a lot of power. As my friend, Mr. Olson, just pointed out,
228 this cross-state air transport rule that the EPA popped on us
229 a month or so ago is going to cost a minimum of 500 jobs in
230 my district, probably another 2,000 jobs that are directly
231 impacted, and EPA's reaction to that was, the company that
232 announced the layoffs yesterday just doesn't understand.

233 Well, my good friends at the FERC, today we want to hear
234 your honest assessment, whatever it is, pro or con. This
235 subcommittee wants the facts. You are all appointed by the
236 President and your job is to give the best assessment as you

237 can. We need to build a lot of power plants in this country
238 in the next 10 years. It doesn't look like anybody is going
239 to build a coal plant. It is almost impossible to permit a
240 nuclear plant. That kind of leaves it to natural gas and
241 perhaps wind power in certain areas of the country.

242 So Mr. Chairman, I will put my formal statement in the
243 record, but I am delighted to have the FERC commissioners and
244 the panelists that are going to follow them, and I look
245 forward to an interesting hearing.

246 [The prepared statement of Mr. Barton follows:]

247 ***** COMMITTEE INSERT *****

|
248 Mr. {Shimkus.} Would the gentleman from Texas who
249 originally had the time, Mr. Olson--

250 Mr. {Barton.} I yield to the gentleman from--

251 Mr. {Shimkus.} Would you yield?

252 Mr. {Barton.} If I am allowed to.

253 Mr. {Shimkus.} Thank you. I also want to just welcome
254 the commissioners, and having the EPA make a determination of
255 the reliability of the generating capacity of this country
256 and the transmission grid is like asking you to make an
257 analysis of nitrous oxide emissions or asking you to make a
258 Safe Drinking Water Act. We look forward to your analysis.
259 I would let Chairman Waxman know that it is not only your own
260 analysis, and I will have this up on the screen when we go to
261 questions, but FERC is at 70 for moderate restriction,
262 Bernstein and Associates 65 gigawatts. EPA is the lowest
263 analysis of the loss of power than any either industry
264 selected or non-industry selected evaluation of this. This
265 is critical for the cost of energy and jobs in this country,
266 and I agree with Mr. Barton that we really need your
267 forthright and honest testimony the effect it is going to
268 have on our consumers and jobs in this country.

269 [The prepared statement of Mr. Shimkus follows:]

270 ***** COMMITTEE INSERT *****

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271 Mr. {Whitfield.} The gentleman's time is expired. At
272 this time I will recognize the gentleman from Illinois, Mr.
273 Rush, for his 5-minute opening statement.

274 Mr. {Rush.} I want to thank you, Mr. Chairman, and I
275 want to thank all the commissioners as well as your other
276 expert witnesses for appearing before this subcommittee
277 today.

278 Mr. Chairman, today we are holding a hearing to
279 determine whether or not there is a need to further delay
280 critical Clean Air Act rules including the Air Toxics Rule
281 and the Cross-State Air Pollution Rule in order to address
282 reliability issues.

283 Mr. Chairman, in my opinion, this is yet another all-out
284 assault, attack on the EPA. It is, as I might borrow my
285 friend from Illinois's phraseology, yet another Republican
286 jihad, assault on the EPA. When will it end? I guess not
287 until after the elections in November of 2012.

288 There has been much debate and widely divergent
289 estimates over grid reliability issues stemming from the
290 number of power plants that would need to be retired once
291 these rules go into effect. As a matter of fact, some
292 earlier reports speculated that a larger number of power
293 plants up to 80 gigawatts or more may be retired as a result

294 of EPA's regulations. However, Mr. Chairman, it must not go
295 unsaid that these reports were based on the worst-case
296 scenarios and the erroneous assumptions about what EPA might
297 propose. More recent independent reports which look at what
298 EPA actually proposed, including the Bipartisan Policy
299 Center's entitled ``Environmental Regulations and Electric
300 System Reliability'' only project 15 to 18 gigawatts of
301 incremental coal plant retirements by 2015. This represents
302 less than 6 percent of total coal-fired capacity and less
303 than 2 percent of total generating capacity.

304 Additionally, many independent studies predict that
305 these rules, including the Air Toxics Rule and the Cross-
306 State Air Pollution Rule, will not threaten the economic
307 health of the Nation but instead will in fact stimulate job
308 growth while protecting the public health.

309 Under these new EPA air regulations, a small percentage
310 of the oldest power plants will need to install pollution-
311 control equipment to continue operations. The capital
312 investments in pollution controls and new generation will
313 create an estimated 1.46 million jobs or an average of
314 290,000 year-round jobs between 2010 and 2015. It is job
315 stimulation in any way you want to look at it.

316 Due to abundant low-priced domestic natural gas supplies
317 and reduced electricity demand, some electricity generators

318 may elect to retire the old inefficient plants rather than
319 invest capital to install pollution controls. This is not a
320 bad thing; it is a good thing.

321 A new report from PJM Interconnection, the Nation's
322 largest transmission operator, says since the reliability is
323 not threatened by coal-fired power plant retirements spurred
324 by new EPA rules despite the coal industry's claims that the
325 impacts could be severe.

326 I have, Mr. Chairman, and I want to insert into the
327 record a letter from Dynergy, a Houston-based coal-fired
328 power company which supplies the Midwest Independent System
329 Operator in Illinois and who is supportive of the EPA's rule.

330 Mr. {Whitfield.} Without objection.

331 [The information follows:]

332 ***** COMMITTEE INSERT *****

|
333 Mr. {Rush.} The Congressional Research Service found no
334 evidence of the majority's predicted train wreck but instead
335 found that the primary impacts that the EPA rules will be on
336 the coal-fired power plants more than 40 years old that have
337 not installed pollution controls. Many of these plants are
338 inefficient and they should be replaced and they are being
339 replaced regardless of EPA's rules.

340 Additionally, a Charles River Associates' report
341 concluded that the electric system reliability can be
342 maintained while improving public health through coal-to-gas
343 conversion, new gas-fired generation, expansion of load
344 management programs and established market and regulatory
345 safeguards.

346 So Mr. Chairman, I join with you and the rest of the
347 Republican jihadists. I am very eager to hear the testimony
348 from the FERC commissioners as well as other witnesses here
349 today over whether the EPA and other federal and State
350 agencies have taken practical steps to plan for the
351 implementation of these rules and have adopted approaches to
352 ensure the electricity industry can comply without
353 threatening electric system reliability.

354 Mr. Chairman, I thank you and I yield back the balance
355 of my time, all of it.

356 [The prepared statement of Mr. Rush follows:]

357 ***** COMMITTEE INSERT *****

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358 Mr. {Whitfield.} At this time before we go to the
359 testimony, I would like to recognize Mr. Gardner for the
360 purpose of requesting putting into the record some
361 documentation.

362 Mr. {Gardner.} Thank you, Mr. Chairman. I would ask
363 the letter from Tim Scott regarding this hearing be submitted
364 for the record with unanimous consent.

365 Mr. {Whitfield.} Without objection. Thank you.

366 [The information follows:]

367 ***** COMMITTEE INSERT *****

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368 Mr. {Whitfield.} At this time I also want to welcome
369 the FERC commissioners. We appreciate very much your taking
370 time to be here. We are sorry for the delay this morning.

371 We have with us today the Chairman of the Federal Energy
372 Regulatory Commission, the Hon. Jon Wellinghoff. Also,
373 Commissioner Phillip Moeller, Marc Spitzer, John Norris and
374 Cheryl LaFleur, and at this time, Chairman Wellinghoff, we
375 will recognize you for your 5-minute opening statement and
376 then we will just go down the line.

|
377 ^STATEMENTS OF HON. JON WELLINGHOFF, CHAIRMAN, FEDERAL ENERGY
378 REGULATORY COMMISSION; HON. PHILIP D. MOELLER, COMMISSIONER,
379 FEDERAL ENERGY REGULATORY COMMISSION; HON. MARC SPITZER,
380 COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION; HON. JOHN
381 R. NORRIS, COMMISSIONER, FEDERAL ENERGY REGULATORY
382 COMMISSION; AND HON. CHERYL A. LAFLEUR, COMMISSIONER, FEDERAL
383 ENERGY REGULATORY COMMISSION

|
384 ^STATEMENT OF JON WELLINGHOFF

385 } Mr. {Wellinghoff.} Thank you, Mr. Chairman and members
386 of the committee. I appreciate the opportunity to be here
387 and testify before you today.

388 Electric reliability and environmental protection are
389 both important to this country's future. The issues are
390 related as, for example, regulations that the EPA recently
391 finalized or is considering will affect the operation of some
392 electric-generating units.

393 With sufficient information and time, the electric
394 industry can plan to meet both its reliability and
395 environmental obligations. Most notably, existing planning
396 authorities with developed modeling capabilities have or
397 could obtain all the necessary data and tools to analyze the

398 potential local and regional reliability impacts stemming
399 from the EPA regulations. These planning authorities provide
400 the appropriate forums for addressing this issue. Some are
401 already taking steps to account for implementation of these
402 EPA regulations. For planning authorities to conduct these
403 analyses, they need early notice of retirements to accurately
404 identify and address reliability issues.

405 The Commission also has a role to play with respect to
406 electric reliability. In general, the Commission has used
407 its existing authority in the past to protect reliability.
408 To this end, the Commission has overseen the establishment of
409 mandatory and enforceable standards that protect the
410 reliability of the bulk power system. Looking forward, the
411 Commission does and will, for example, review studies to
412 determine the changes that occur due to changes in mix and
413 location of resources in a region as well as planning-related
414 proposals that account for implementation of these EPA
415 regulations.

416 The Commission also can and will share our staff's
417 expertise with the EPA when appropriate. Commission staff
418 has had numerous consultations with EPA staff on issues
419 related to these EPA regulations including informal
420 assessments that each has conducted. Commissioner staff's
421 informal assessments of generator retirements are inadequate

422 to be used as a basis for decision making. More generally,
423 it is important to recognize that although the Commission is
424 well suited and able to perform its statutory duties
425 including those with respect to reliability, it does not
426 possess the data nor the models necessary to replace the
427 industry's individual and collective planning processes in
428 addressing the potential local and regional impacts of these
429 EPA regulations on electric reliability.

430 That completes my summary of my testimony. Thank you,
431 Mr. Chairman.

432 [The prepared statement of Mr. Wellinghoff follows:]

433 ***** INSERT 1 *****

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434 Mr. {Whitfield.} Thank you.

435 Mr. Moeller, you are recognized for 5 minutes.

|
436 ^STATEMENT OF PHILIP D. MOELLER

437 } Mr. {Moeller.} Thank you, Mr. Chairman and Ranking
438 Member Rush, members of the committee. It is a pleasure to
439 be here today. Thank you for inviting us to testify and your
440 interest in this matter because it is of great importance to
441 the Nation.

442 At FERC, our statutory interest in this is primarily
443 having to with bulk system electric reliability as that is
444 the responsibility that you gave us in 2005 under Section 215
445 of the Federal Power Act but we also have an interest in
446 policies that can affect rates because of our statutory
447 direction there as well.

448 I believe this Nation can retire a significant amount of
449 existing generation. In fact, nearly all of our existing
450 generation will be retired and replaced within the next 40
451 years. The key questions are which plants are going to be
452 retired, where are they and what is a manageable time frame
453 in which to retire them.

454 In retiring a significant amount of existing generation
455 within a short period of time, though, does have cost impacts
456 and so while there will be health benefits to closing certain
457 plants, there are also consequences to rising electricity

458 rates.

459 Now, one common assumption is that many of these coal-
460 fired plants, especially the baseload ones, will be replaced
461 with new generation fueled by natural gas. But that
462 assumption is based on the fact that we have new domestic
463 supplies of natural gas, largely from shale deposits, that
464 have been keeping prices in a moderate level, that appear to
465 be a moderate level going out in the futures markets. But if
466 there are legislative or regulatory efforts to restrict this
467 new supply of gas, the price of shutting these coal plants
468 will rise significantly, and in addition, the Nation's
469 natural gas pipeline network will need to be expanded to meet
470 this increased demand to keep prices reasonable. At a
471 minimum, this will take a few years.

472 Now, the suite of proposed EPA rules and the timelines
473 associated with each of these proposed rules impact different
474 regions in different ways, and this adds to the complexity of
475 developing solutions. Although some regions do have excess
476 generating capacity and can absorb retirement, the laws of
477 physics dictate that analyzing the impact must be done on a
478 granular level down to the specific load pockets that are
479 affected. In my letter to Senator Murkowski that I attached
480 to my testimony, I provide a case study of the successful
481 retirement of four plants in the Philadelphia area, but there

482 were challenges and costs associated with those retirements.

483 Now, I have called for FERC to be more involved in
484 analyzing the EPA rules from a reliability standpoint and a
485 more open process for public input. Given the dynamic nature
486 of the rulemaking process, we can't expect to have a perfect
487 analysis of the impacts but we can make our best effort
488 involving EPA, DOE, NERC, regions. The State utility
489 commissions would be essential.

490 In addition, there have been some other ideas and some
491 other measures that have been suggested to minimize the
492 disruption to the electric sector. Clarifying the conflict
493 between the Clean Air Act and the Federal Power Act when
494 reliability is at stake is one idea. Determining each
495 agency's statutory authorities for reliability conditions is
496 another, and requiring more advance notice of plant
497 retirements could be helpful.

498 Again, I appreciate the chance to testify before you,
499 your interest in this issue, and I look forward to answering
500 any questions you may have.

501 [The prepared statement of Mr. Moeller follows:]

502 ***** INSERT 2 *****

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503 Mr. {Whitfield.} Thank you, Mr. Moeller.

504 Mr. Spitzer, you are recognized.

|
505 ^STATEMENT OF MARC SPITZER

506 } Mr. {Spitzer.} My name is Marc Spitzer and I am a
507 member of the Federal Energy Regulatory Commission. I thank
508 you for the opportunity to appear before you today to discuss
509 my views on the potential impacts of the Environmental
510 Protection Agency's new and proposed power sector regulations
511 on electricity reimbursement.

512 In the Energy Policy Act of 2005, Congress assigned FERC
513 authority with respect to the reliability of the bulk power
514 system. I remain committed, as do each of my colleagues, to
515 ensuring the reliable operation of our Nation's electric
516 grid. Reliable service of electricity is essential to the
517 health, welfare and safety of the American people and
518 necessary to serve our economy. However, I recognize that
519 environmental protection laws and regulations are important
520 to the well-being of our Nation as well. The United States
521 has superb records in both environmental protection and
522 electric reliability.

523 The issue before us today is how to best address the
524 potential impacts of the EPA's new and proposed power sector
525 regulations on the reliability of the Nation's bulk power
526 system. I have several suggestions regarding the concerns

527 raised.

528 First, FERC and the EPA need to be proactive to ensure
529 reliability concerns are considered and addressed in any
530 analysis by the EPA of its environmental regulations
531 affecting utilities. To this end, I recommend that FERC and
532 EPA continue their dialog but in a more formalized and
533 expansion fashion. Given the potential impacts of EPA's
534 proposed rules on the bulk power system, such coordination is
535 critical to ensuring that EPA does not enforce its rules in a
536 vacuum.

537 Second, the electric industry recognizes its obligation
538 to comply with both environmental regulations as well as
539 FERC-approved reliability standards and to plan their systems
540 to reliably serve customers while complying with
541 environmental requirements. It is the regulated entity,
542 whether an individual utility or an independent system
543 operator regional transmission organization, with better
544 knowledge of its operations, needs and requirements that is
545 in the best position to determine through its planning
546 process how it will meet the various regulatory requirements
547 that it faces. Decisions as to whether a unit is retired or
548 retrofitted are typically made at the local or State level
549 and State utility regulators generally play a significant
550 role in resource adequacy decisions as well as compliance

551 with EPA's proposed regulations. My concern is that
552 regulated entities must have adequate time to plan their
553 systems to comply with the rules that the EPA promulgates and
554 with the FERC-approved reliability standards. Inadequate
555 time to comply with the EPA's proposed regulations may result
556 in users, owners and operations of the bulk power system
557 being compelled by their government to choose between
558 compliance with environmental laws or with FERC-approved
559 reliability standards and then a face a penalty from one of
560 these agencies. Regulated entities should not be put in a
561 position of having to elect which agency's penalty they would
562 rather face. Requiring public utilities to make such a
563 Hobson's choice does not serve consumers and frankly is not
564 good government.

565 As an example of one way to address this timing concern,
566 in comments to the EPA certain of the ISO/RTOs propose a
567 reliability safety valve that would permit a case-specific
568 extension of time for compliance by a retiring generator
569 needed to implement reliability solutions to replace the
570 resource. I suspect it will be a rare situation when a
571 regulated entity finds itself after having adequate time for
572 planning in a position of having to choose between compliance
573 with one regulator's rules over another's. It should be the
574 duty of the regulators to work together and with the

575 regulated entity to find a resolution that best assures
576 reliable operation of the electric grid and compliance with
577 environmental standards without violation of either
578 regulator's rules.

579 Mr. Chairman, I thank you for the opportunity to provide
580 my views on these important matters and I would be pleased to
581 answer your questions.

582 [The prepared statement of Mr. Spitzer follows:]

583 ***** INSERT 3 *****

|

584 Mr. {Whitfield.} Thank you, Mr. Spitzer.

585 Mr. Norris, you are recognized for 5 minutes.

|
586 ^STATEMENT OF JOHN R. NORRIS

587 } Mr. {Norris.} Thank you, Mr. Chairman, Representative
588 Rush and members of the subcommittee for inviting me here
589 today. My name is John Norris and I am a commissioner with
590 the Federal Energy Regulatory Commission.

591 As I stated in my written testimony submitted for
592 today's hearing, I am sufficiently satisfied that the
593 reliability of the electric grid can be adequately maintained
594 as compliance with EPA's regulations is achieved.

595 Why do I say ``sufficiently''? Because, frankly, I
596 don't think we can ever be totally satisfied. Situations
597 occur every day that impact the reliability of the electric
598 grid. I believe the key is to be vigilant in protecting the
599 grid from a myriad of vulnerabilities while being cognizant
600 of the costs, while maintaining a reliable grid, and being
601 able to promptly address new and emerging threats to
602 reliability.

603 Nearly every decision involving reliability involves
604 choices, choices between competing variables like cost, like
605 level of reliability, environmental protections and more.
606 The situation we face with the EPA rules is no different.
607 That is why we have tools developed for meeting reliability

608 and electricity supply challenges. So my colleagues have
609 already cited the tool that you gave us with EPACT 2005 with
610 the tools regarding reliability standards and the enforcement
611 and penalty provisions that we have to oversee those
612 standards with reliability. That is a tool we have going
613 forward to address reliability concerns.

614 FERC has other places in place as does the DOE, as does
615 the EPA and even the President to deal with reliability
616 concerns going forward. Specifically under our jurisdiction
617 at FERC, there are markets in place under our jurisdiction to
618 provide market signals to the upcoming rules and costs
619 associated with them can produce the most effective solutions
620 to meet the resource needs for implementing these rules.
621 These markets have fostered the development of new capacity
622 resources, demand-side resources, new technologies like
623 energy storage and more that currently are meeting our needs
624 and will in the future. I have confidence these same markets
625 will enable us to address the resource needs as a result of
626 the EPA rules. That is not say there will not be challenges,
627 and we may need to adopt new market rules to deal with
628 situations that arise for specifically addressing the impact
629 of these EPA rules but that is not new or a reason to delay
630 the rules. The transmission planning regions and processes
631 under FERC's jurisdiction that we have established with Rule

632 890, Order 890, and recent Order 1000 have put in place tools
633 needed for transmission planning so that resources are there
634 to address these types of challenges.

635 There have been numerous studies conducted regarding the
636 impact of the EPA rules and the impact they have on resource
637 adequacy and reliability. The biggest takeaway I have from
638 these studies is there is a wide range of potential outcomes
639 and a wide range that is driven by many different scenarios
640 the studies have studied for the many possible rules EPA may
641 determine or may make final.

642 But all of these studies reached the conclusion that
643 there will adequate resources available. The challenge is,
644 how do we make sure we apply the tools we have which we do
645 every day in addressing reliability. These studies also
646 revealed there area number of factors outside the EPA rules
647 that are changing the makeup of our electric generation today
648 largely driven by the market and largely driven by low
649 natural gas prices as multiple studies have indicated. There
650 is a transition occurring. We have a tremendous amount of
651 our generation fleet today. Unfortunately, I would like to
652 say unlike you and I, we can handle being members of AARP but
653 I am not sure our electric fleet should be. We have an
654 opportunity in this country to make a more efficient electric
655 generation fleet to serve our needs going forward. This just

656 presents another challenge of how we change that fleet out
657 but it is happening right today irrespective of these EPA
658 rules. With a marketplace as we have in place to make this
659 transition most efficiently than what is already happening in
660 the marketplace with natural gas and the change out of our
661 generation, this is an opportunity to address health concerns
662 and make our energy system more efficient for a more
663 efficient economy in the future. We should not shy away from
664 it. I don't think another study about potential outcomes or
665 different scenarios will add to our ability to address
666 reliability. We have tools in place today that if we use
667 those tools, we continue to be diligent, we will be able to
668 accommodate the impact of these EPA regulations.

669 So thank you for the opportunity to share with you
670 today.

671 [The prepared statement of Mr. Norris follows:]

672 ***** INSERT 4 *****

|

673 Mr. {Whitfield.} Thank you.

674 Ms. LaFleur, you are recognized for 5 minutes.

|
675 ^STATEMENT OF CHERYL A. LAFLEUR

676 } Ms. {LaFleur.} Thank you very much, Mr. Chairman,
677 Ranking Member Rush and members of the subcommittee. I also
678 very much appreciate the opportunity to testify today.

679 My name is Cheryl LaFleur. In July 2010, I was
680 confirmed as a commissioner of the Federal Energy Regulatory
681 Commission. In my past career, I had the privilege of
682 serving electric and natural gas customers in New England and
683 New York. That experience taught me firsthand how important
684 electric reliability is to real people and real communities.
685 Since joining the Commission a little over a year ago, I've
686 made reliability one of my top priorities.

687 For some time now, we have been hearing about the EPA's
688 proposed air and water regulations and their potential to
689 affect our energy supply. Although not all of the
690 regulations are final, I believe it is important to consider
691 them as a package when assessing their potential affect on
692 reliability. This is because the owner of a power plant will
693 appropriately consider all of its EPA regulations, among
694 other factors, in determining whether it is economically
695 feasible to retrofit or repower a unit or whether it makes
696 economic sense to retire the unit.

697 Should the owner of a power plant decide to retire a
698 unit because the unit cannot be economically retrofitted to
699 meet the new EPA regulations, it must notify the State and
700 regional planning authorities of its decision. Those
701 authorities must then determine whether there is enough
702 available generation or transmission to allow the unit to
703 retire without affecting reliability or whether the
704 retirement will create the need for new generation, new
705 transmission or other resources in order to maintain
706 reliability. Like an owner's decision whether to retrofit a
707 replace a unit, the reliability consequences of a retirement
708 will be dependent on the specific facts of each case, each
709 locality and each region.

710 While the EPA regulations are not expected to affect our
711 overall resource adequacy as a Nation, they may be present
712 reliability issues in particular localities or regions. In
713 some regions, conditions may be such that a retirement or
714 several retirements related to the new regulations will not
715 create a reliability concern. In other areas, the retirement
716 of even a single unit may create the need for an alternative.
717 In this regard, I believe that for studies about the
718 potential effects of the EPA regulations to have the most
719 accuracy and predictive value, they must be conducted after
720 the regulations are final and unit owners have decided

721 whether to retrofit or retire. Studies under these
722 conditions don't necessarily require the extensive number of
723 assumptions required for nationwide analysis that are driving
724 all the different numbers we have now and are more likely to
725 really drill down on the local and regional issues that we
726 really need to face.

727 If a retirement does create a potential reliability
728 issue, the owners and the planning authorities must determine
729 what resources will replace the unit and how long it will
730 take to bring the new resources online. Given the long lead
731 time for certain types of resources, there may be a gap of
732 time when a replacement facility is not yet available but the
733 retiring unit is no longer compliant with the new
734 regulations. In such cases, a time-limited waiver of EPA
735 regulations may be needed. In other cases, a reliability
736 must-run contract under the authority of the Commission may
737 also be needed to allow the power plant to operate within
738 certain discrete parameters for a defined period of time.

739 I believe that any waivers or flexible solutions must be
740 targeted and discrete. Specific reliability analyses at the
741 local and regional level are much more meaningful than all
742 the nationwide estimates that are floating around. The
743 circumstances of each retirement and the need for replacement
744 are fact-specific. I do not support a blanket delay of EPA

745 regulations but I will certainly champion specific extensions
746 where needed for reliability. I believe that the EPA should
747 and that the EPA does understand the need to be flexible in
748 specific cases.

749 Because of our jurisdiction over regional transmission,
750 utility rates and reliability standards, FERC should be
751 actively involved in these issues when they arise. I believe
752 we can play an important role in discussions among regional
753 planners, NERC and the regional reliability entities,
754 utilities, States and the EPA. I think it would helpful for
755 FERC to sponsor a workshop or series of workshops that bring
756 together all these stakeholders to discuss the regulations,
757 as Commissioner Norris said, the tools we have at our
758 disposal to meet them. For example, FERC can examine and
759 approve market rules designed to facilitate reliability and
760 designed to increase the notice that planners get when
761 retirements are happening. I am confident that we as a
762 Nation can ensure that the EPA's proposed air and water
763 regulations do not adversely affect reliability provided
764 there is coordination and flexibility in their
765 implementation.

766 Thank you.

767 [The prepared statement of Ms. LaFleur follows:]

768 ***** INSERT 5 *****

|
769 Mr. {Whitfield.} Thank you, and thank all of you for
770 your testimony.

771 Ms. LaFleur, you made the comment that you thought it
772 would be useful to have a workshop and bring in interested
773 parties to maybe better coordinate or look at this issue of
774 reliability in a more comprehensive way. Is that correct?

775 Ms. {LaFleur.} Yes, and to look at the tools to make
776 sure we have all the right tools in our tool chest.

777 Mr. {Whitfield.} Mr. Wellinghoff, do you have any plans
778 to have a workshop like Ms. LaFleur is discussing?

779 Mr. {Wellinghoff.} I don't have any plans at this point
780 in time. We have had a number of discussions with the
781 planning authorities that come into FERC all the time and
782 have discussions with them about the tools that they have
783 available to adequately address the EPA proposed regulations.
784 I actually talked to David Owens the other day from EEI about
785 this issue of a workshop. He didn't feel that that was
786 something that would be necessary from an industry
787 perspective. So I haven't seen the need for it at this point
788 in time.

789 Mr. {Whitfield.} Are there any other commissioners that
790 believe that a workshop like Ms. LaFleur is talking about
791 would be useful? Mr. Moeller?

792 Mr. {Moeller.} Well, I have been in favor of it because
793 I think we can get some of these issues out there, we can
794 talk about some of the reliability implications that need to
795 be drilled down. I can go into more detail if you would
796 like.

797 Mr. {Whitfield.} Mr. Spitzer?

798 Mr. {Spitzer.} Mr. Chairman, I am certainly respectful
799 of Commissioner LaFleur's effort to get more discussion. My
800 view would be, I would rather have that take place before the
801 rules become final so that we are not dealing with a done
802 deal that is able to--makes it more difficult to deal with a
803 final rule as opposed to during the planning process of the
804 promulgation of the rule.

805 Mr. {Whitfield.} Mr. Norris?

806 Mr. {Norris.} Thank you. As I said, another meeting,
807 another study with multiple scenarios on the table really
808 doesn't, in my mind, get us anywhere. The analysis should
809 be, do we have the tools available. I believe we have tools
810 available now. Once we know what the rules are, we see what
811 the impact is going to be and see what the impact is in fact
812 in motion, then a workshop would be useful to say is that
813 tool right or do we need to change that based on what we are
814 seeing happening in the marketplace, what we are seeing
815 happening with plant retirement decisions. But to have a

816 meeting now would be, in my mind, like another one of the
817 studies. We need to have--I think a workshop following the
818 implementation of rules to make sure we are watching this, we
819 are being vigilant about how reliability is being impacted
820 may be a very productive outcome.

821 Mr. {Whitfield.} You say that you have the tools
822 available and yet Mr. Wellinghoff in his testimony talked
823 about that he felt like the best entities to really look at
824 reliability because he said he did not adequate resources was
825 the utilities and other entities. But you say you have the
826 tools necessary to look at reliability.

827 Mr. {Norris.} I believe that is right because I think
828 we have tools, we oversee the marketplace in those
829 independent system operations/regional transmission
830 organizations, so if they identify a problem out there, they
831 can come to us and we can look at market rules and make
832 adjustments. The States have tools through their oversight
833 of generation and their integrated resource planning
834 processes to address situations. I didn't mean to imply that
835 we have the only tools. We have tools. There are multiple
836 tools throughout this situation at DOE, at the EPA with the
837 possibility for consent decrees. Also, the time I have
838 already given to comply with these rules.

839 Mr. {Whitfield.} Mr. Wellinghoff, does FERC intend to

840 update its preliminary assessment in light of the new
841 information and proposals issued by EPA?

842 Mr. {Wellinghoff.} No.

843 Mr. {Whitfield.} I noticed back in October, the FERC
844 staff was recommending to conduct additional reliability
845 studies.

846 Mr. {Wellinghoff.} I am sorry. What are referring to,
847 Mr. Chairman?

848 Mr. {Wellinghoff.} In October, the Office of Electric
849 Reliability at FERC said that the staff will continue to
850 conduct reliability studies relating to this issue, but from
851 your perspective, there is no need for additional assessment,
852 I take it?

853 Mr. {Wellinghoff.} No specific assessment. Those
854 studies would relate to the interface between EPA and the
855 planning regions and those studies would in fact look at the
856 assurances that there is proper information sharing between
857 the planning authorities that have the tools. And when we
858 talk about the tools that Commissioner Norris was talking
859 about, we have tools as well. Our tools are regulatory
860 tools. The planning authorities are planning modeling tools
861 and actually do drill down and do the discrete analysis that
862 is necessary to really determine what are the mitigation
863 strategies and activities at the planning level to ensure

864 reliability. Those are the tools they have. The tools we
865 have are things like our Order 1000 which we recently issued.
866 We explicitly set forth for the planning authorities the
867 requirement that they look at public policy as part of their
868 planning. That is the tool we have.

869 Mr. {Whitfield.} Let me just ask one other question. I
870 know that in March you all came out with an order relating to
871 demand response, which was supposed to address problems at
872 peak periods, and can all of you say very comfortably that
873 you are really not concerned about reliability, the impact on
874 reliability that the environmental regulations that EPA would
875 have?

876 Mr. {Wellinghoff.} That particular order on demand
877 response actually was for using demand response in the energy
878 markets as opposed to the capacity markets, which would have
879 been the peak periods.

880 Mr. {Whitfield.} Okay. Mr. Moeller?

881 Mr. {Moeller.} I am not exactly sure of your question,
882 Mr. Chairman.

883 Mr. {Whitfield.} Actually, I have gone a minute over
884 anyway so we will get back to it.

885 Mr. Rush, you are recognized for 5 minutes.

886 Mr. {Rush.} I want to thank you, Mr. Chairman.

887 Chairman Wellinghoff, recently Senator Murkowski issued

888 a press release stating, and I quote, ``The Commission staff
889 has preliminarily estimated that up to 81 gigawatts of
890 existing generation are 'likely' or 'very likely' to be
891 retired as a consequence of new EPA rules.'' Based on
892 subsequent statements, however, you clarified that this
893 estimate was way high because it included significant
894 assumptions about the rules that were ultimately found to be
895 incorrect. Would you please comment on--

896 Mr. {Wellinghoff.} Well, as Mr. Waxman indicated in his
897 opening statement, that back-of-the-envelope analysis was
898 just a preliminary one to set the stage for us to enter into
899 some discussions with EPA to determine the appropriateness of
900 EPA's interaction with the planning authorities to determine
901 ultimately how these rules could impact their planning
902 requirements in each individual region. There was no intent
903 for the use of that particular number to be used in any way
904 for planning. It is not a planning number. It should not be
905 used for planning. It is not appropriate to do that. And I
906 believe in fact that number as the EPA's number of 10 is
907 irrelevant because what is relevant are the numbers that will
908 be developed by the planning authorities in each region
909 determined discretely what the impacts are and how those
910 impacts can best be mitigated in the time frames necessary.

911 And I want to add to that that I think Commissioner

912 LaFleur has mentioned, and I know that Commissioner Spitzer
913 in his extended testimony has mentioned, you know, this
914 flexibility that we need to put into the process. For
915 example, the ISOs and RTOs have recommended a discrete safety
916 valve that could be put in for particular locational plants
917 that may have problems that are revealed in this planning
918 process. We need some level of flexibility for those. But
919 we do not need to, you know, stop these rules going forward.
920 I think these rules are appropriate. These rules in fact do
921 what needs to be done in this country, and that is,
922 internalize the external costs that we have with respect to
923 electricity, and once we start internalizing those costs, we
924 will start giving the right market signals to consumers and
925 the people who are consuming the energy, and those market
926 signals can make us all more efficient and more prosperous
927 and more economic.

928 Mr. {Rush.} Well, Chairman Wellinghoff, I hear you
929 saying that State or regional planning processes to identify
930 future required infrastructure and resources are the
931 appropriate vehicle for addressing EPA rules reliability
932 impact. Give us a little bit more of the, say, intimate
933 details. How will this process really work?

934 Mr. {Wellinghoff.} Well, I think you will actually get
935 some of the details from your next panel because there will

936 be representatives from PJM. That is one of the planning
937 authorities. There will also be representative from ERCOT,
938 which is another planning authority, and they will describe
939 for you how they go through their planning process, and in
940 fact, they have a planning process that is either every year
941 or every other year that looks forward on a 5-, 10- or 20-
942 year basis, depending upon the--actually, it is a 10-, 15- or
943 20-year basis, depending upon the planning authority itself,
944 and so they are very well equipped with discrete models that
945 are specific to their region, that take data from all the
946 resources in the region including the power plants,
947 transmission lines and the demand-side resources and
948 determine through that analysis on an ongoing rolling basis
949 what is needed with respect to ensuring reliability in their
950 particular regions. Now, we oversee that but it is not our
951 job to do--

952 Mr. {Rush.} My time--

953 Mr. {Wellinghoff.} --central planning. We don't think
954 we should be in the business of central planning.

955 Mr. {Rush.} Sorry for interrupting, but my time has
956 come to a close. I have a question for all the
957 commissioners. Are all of you aware or familiar with the
958 recent bipartisan CRS report concluding that the primary
959 impact of EPA's rules will primarily impact smaller, older,

960 inefficient coal plants, many of which are uneconomic
961 regardless of EPA's rules? Can you comment on the report's
962 conclusion that the Nation has enough excess generation
963 capacity that retirement of 45 gigawatts of capacity by 2014
964 will have little effect on reserve margins?

965 Mr. {Wellinghoff.} I know, for example, Mr. Rush, in my
966 State, Nevada, the Nevada utility has a 60 percent excess
967 capacity above its reserve margin so they have huge amounts
968 of excess capacity in my particular State, and as Congressman
969 Waxman indicated, there is at least 100 gigawatts of excess
970 capacity above the existing capacity. Plus if we look at the
971 amount of new resources that we need to put in, even if it is
972 80 megawatts, say, I think Commissioner Norris indicated in
973 his testimony, in his full testimony, between 2002 and 2003
974 we put in over 200 gigawatts of new capacity in this country.
975 So it is not unprecedented. It is something that has
976 happened before and something that we certainly can take care
977 of with respect to proper planning, proper analysis and
978 review by the planning authorities.

979 Mr. {Rush.} Anybody else?

980 Mr. {Moeller.} Congressman Rush, I am familiar with
981 both studies and their conclusions, but here is my concern
982 from a reliability perspective. Smaller plants are typically
983 dirtier and older but there are advantages in the system to

984 smaller plants. They ramp up and down faster. They might be
985 in locations where the voltage support is key, and I can go
986 through a variety of other examples where where they are
987 located can make a lot of difference, and that is why I think
988 we need to dig down deeper into the impacts here because
989 there will be a disproportionate number of smaller, older,
990 dirtier plants affected but their role in the overall
991 electric grid needs to be better analyzed.

992 Mr. {Spitzer.} Congressman, the aggregate studies
993 aren't helpful on the question of reliability. They have
994 some merit in determining potentially wholesale power prices
995 across the country and across the grid. But as my colleagues
996 have all pointed out, location matters in electricity, and a
997 substantial excess capacity in Nevada may not help the folks
998 in Arizona, where I come from, if three coal plants that have
999 issues disappear from the grid. So it is the local impacts
1000 that are serious, and that is why we are so interested in
1001 working with the local planning authorities because FERC
1002 doesn't have the authority with regard to demanding
1003 retirement or construction of plants, and it was expressively
1004 reserved away from us in EPACT 2005 Section 215. So we are
1005 more concerned with the local impact on reliability as
1006 opposed to some of these aggregate macro studies.

1007 Mr. {Whitfield.} Mr. Rush, your time is expired.

1008 At this time I will recognize the gentleman from
1009 Illinois, Mr. Shimkus.

1010 Mr. {Shimkus.} Thank you, Mr. Chairman. I am going to
1011 be quick. I have got tons I want to cover.

1012 First of all, I want to submit for the record the Wall
1013 Street Journal editorial that basically says calling for an
1014 EPA moratorium. The second line says ``immediately suspend
1015 the Environmental Protection Agency's bid to reorganize the
1016 U.S. electricity industry.'' Actually, I would argue that
1017 some of you would like to do the same thing and impose a
1018 moratorium on EPA rules, at least until hiring and investment
1019 rebound for the extended period.

1020 We are in an economic crisis. We need jobs. Put the
1021 first slide up, please. For 1,000 gigawatts, these are the
1022 jobs in these industrial sectors. Five hundred jobs in the
1023 nuclear power industry, 220 jobs in the coal industry, 90 in
1024 the wind, 60 in natural gas when we shutter these plants
1025 based upon these EPA rules, and I am going to argue, your
1026 negligence, we lose those jobs. And when these locations are
1027 in poor, rural southern Illinois, they are the primary tax
1028 base for local government. So you have a lot on your plate,
1029 and I think you all are being pretty negligent.

1030 You are the reliability folks based upon Section 215 of
1031 the power act, your own mission statement, your Office of

1032 Energy Reliability, recent actions that you have taken--put
1033 up the next slide. This isn't the fight against EPA's
1034 projections and your projections. These are the other
1035 industrial sectors that says these are the powers that are
1036 going to be offline if we allow these rules to go, and on
1037 average, you are at 60 gigawatts of power, 60. EPA is at 10.
1038 They are doing the analysis of what the reliability and the
1039 production of the bulk generating plants. Just give me a
1040 break.

1041 Chairman, do you still believe as you were quoted, and I
1042 would like to submit this for the record, that we may never
1043 need any more coal or nuclear power in this country, that we
1044 can do this all on green and that will be our baseload
1045 production for the future?

1046 Mr. {Wellinghoff.} That particular statement in context
1047 was this: I believe that going forward, the resources that
1048 we have in this country include wind, solar, geothermal,
1049 natural gas--

1050 Mr. {Shimkus.} And your statement--

1051 Mr. {Wellinghoff.} Excuse me.

1052 Mr. {Shimkus.} Reclaiming my time, Chairman.

1053 Mr. {Wellinghoff.} I wasn't done. That was only half
1054 my answer.

1055 Mr. {Shimkus.} I know your statement.

1056 Mr. {Wellinghoff.} If that is all you want, that is
1057 fine.

1058 Mr. {Shimkus.} I understand who your loyalties lie to,
1059 and it is to the environmental left and it is to Harry Reid
1060 and this green agenda that can't produce the power needed for
1061 reliability and destroys all those jobs I just put up on the
1062 slide. Now, you were quoted as saying no more coal, no more
1063 nuclear. That is fine but you also have your own--your own
1064 staff said you can't have a one-to-one replacement. So that
1065 was the question of the chairman: can you have a one--your
1066 own staff says you can't have a one-to-one replacement on
1067 power generation solely on green power.

1068 Now, let me go to the EPA.

1069 Mr. {Rush.} Mr. Chairman.

1070 Mr. {Shimkus.} Where I am really concerned on the
1071 negligence here is the EPA in their rule says in addition EPA
1072 itself has already begun reaching out to key stakeholders.
1073 You all are included in that. This is their rule. You are
1074 included. But you are saying, no, we are not going to
1075 determine this until after EPA promulgates these rules. Now,
1076 EPA is asking you to be involved. Actually, the rule says
1077 you, NERC, FERC, the public utility commissions, but your own
1078 testimony here, and especially Mr. Wellinghoff's, Mr.
1079 Norris's, Ms. LaFleur's says we are going to do it

1080 afterwards. Where does that leave us with after the fact on
1081 this debate on reliability? Do you reject that this is in
1082 the EPA in their rule?

1083 Mr. {Wellinghoff.} Mr. Congressman, with all due
1084 respect, my testimony is not that we are going to do it
1085 afterwards. My testimony is that--

1086 Mr. {Shimkus.} Your statement is that you are going to
1087 do it afterwards.

1088 Mr. {Wellinghoff.} No, it is not. My statement is that
1089 the planning authorities are doing it now. In fact, PJM was
1090 in my office the other day--

1091 Mr. {Shimkus.} I am not talking about planning. I am
1092 talking about you.

1093 Mr. {Rush.} Point of order, Mr. Chairman.

1094 Mr. {Shimkus.} What is the matter, Mr. Rush? Am I
1095 getting too close to home?

1096 Mr. {Rush.} No, point of order. You aren't allowing
1097 the witness to answer--

1098 Mr. {Shimkus.} I have got the questions.

1099 Mr. {Rush.} You are badgering the witness.

1100 Mr. {Shimkus.} I hope I get my time recovered, Mr.
1101 Chairman.

1102 Mr. {Whitfield.} You will.

1103 Mr. {Rush.} This is not within the established decorum

1104 of this subcommittee.

1105 Mr. {Whitfield.} Now listen, Mr. Rush. He has the
1106 opportunity to ask questions. He is asking questions.

1107 Mr. {Rush.} But he--

1108 Mr. {Whitfield.} Let me just say something else. You
1109 used the word ``jihadist'' in your opening statement.

1110 Mr. {Rush.} I only borrowed that term--

1111 Mr. {Whitfield.} And I tell you what, I think that is--

1112 Mr. {Rush.} I only borrowed that term from your side,
1113 Mr. Chairman. I only borrowed that term from my term from
1114 southern Illinois who used it yesterday, and you--

1115 Mr. {Whitfield.} Who was that?

1116 Mr. {Rush.} He knows exactly who it is, my friend from
1117 southern Illinois.

1118 Mr. {Shimkus.} I would check the transcript, Mr. Rush.

1119 Mr. {Rush.} I heard you say it.

1120 Mr. {Whitfield.} Let me just say, these issues are
1121 quite contentious. We have very strong feelings about them.
1122 But we don't need to use--

1123 Mr. {Rush.} Just be courteous to the witness. That I
1124 all I am saying.

1125 Mr. {Whitfield.} Let us not use these words
1126 ``jihadist'' any more on either side. Now, Mr. Shimkus has
1127 30 seconds left so let him--

1128 Mr. {Shimkus.} I am glad we have kept the slide up
1129 here. For my friend from Chicago, those job statistics are
1130 per generation per 1,000 megawatts are those are the jobs
1131 that are going to be lost, and look at where coal and look at
1132 where natural gas is and look where wind is. And I would
1133 just ask this question. It is clear in your testimony
1134 provided here today in the materials provided by FERC
1135 detailing the meetings between EPA, FERC, DOE that the level
1136 of coordination suggested by EPA has not occurred. That is
1137 based upon your testimony and your documents. Why has this
1138 not happened? And Mr. Chairman, if I could ask each member
1139 of the Commission to answer that, I would appreciate it.

1140 Mr. {Whitfield.} Yes, go ahead and answer, please.

1141 Mr. {Wellinghoff.} Thank you. I believe the level of
1142 coordination that has occurred between our agency and EPA has
1143 been sufficient. I believe that we are continuing to
1144 coordinate with EPA and will do so to ensure that EPA can
1145 work with the planning authorities, provide them with the
1146 data that is necessary to have those planning authorities to
1147 take into account the EPA regulations and incorporate that
1148 into their final determinations to mitigate any impacts with
1149 respect to reliability.

1150 Mr. {Moeller.} Congressman, I believe there has been
1151 some informal discussions between the staffs and there have

1152 been a few meetings, one of which I was involved in between
1153 commissioners and EPA officials, but I have called for a more
1154 open process or transparent process so that we can get these
1155 issues in a higher spotlight.

1156 Mr. {Spitzer.} Mr. Chairman, Congressman Shimkus, I
1157 wasn't invited to the EPA meetings but I am of the strong
1158 believe that all five FERC commissioners are committed to
1159 reliability as is the case often--

1160 Mr. {Shimkus.} You weren't invited?

1161 Mr. {Spitzer.} Well, there were quorum issues and other
1162 reasons for that, and I was--

1163 Mr. {Shimkus.} So they only invited Democrat
1164 commissioners?

1165 Mr. {Spitzer.} I believe Commissioner Moeller was
1166 invited, and the chairman did advise me and notified me of
1167 these and has advised me of the progress of these, and all
1168 five FERC commissioners are committed to reliability. I
1169 would suggest to you five points. I will try to be quick
1170 running through them. Granularity--it is at the local level
1171 that these decisions are made. Power plant operators, State
1172 regulators who will follow us and FERC share responsibility
1173 for providing reliable power at reasonable prices to the
1174 ratepayers of the United States and it is that granularity
1175 that is essential, and FERC doesn't have the authority to

1176 mandate that a utility build a power plant nor does have FERC
1177 have the authority to require a utility to retrofit or retire
1178 a plant, and that was specifically decided by the Congress in
1179 2005, and my friends who are going to testify next would be
1180 very angry in fact if FERC were to trespass on that
1181 authority.

1182 There are many variables. There are three plants in
1183 Arizona that are threatened with regional haze, which is not
1184 part of this suite of EPA regulations. It goes to a
1185 visibility issue over the Grand Canyon. And there are also
1186 economic issues apart from EPA. There are timing issues, and
1187 I try to discuss in my testimony the need for a safety valve
1188 to give more time. And then the fact that there are
1189 iterative processes. A one-time freeze frame doesn't do the
1190 job and the planning agencies look in some cases every year
1191 in some cases every 6 months. And then finally, I like all
1192 fuels, Mr. Chairman, members. I think there is room for all
1193 fuels. I would like to see fair and equitable rules so that
1194 market forces determine ultimately what power plants get
1195 constructed.

1196 Mr. {Whitfield.} We have gone 3 minutes over, so I am
1197 going to stop this and recognize Ms. Castor for 5 minutes of
1198 questions.

1199 Ms. {Castor.} Thank you, Mr. Chairman and Ranking

1200 Member Rush, and thank you to the witnesses for your
1201 testimony today.

1202 Opponents of EPA's public health rules raise questions
1203 over the potential for the retirements of the old,
1204 inefficient coal plants which I believe raises further
1205 questions about the electric industry's ability to address
1206 those retirements should they occur. First, several
1207 independent studies point to the current availability of
1208 excess generation capacity, what the chairman and Mr. Rush
1209 have discussed previously. The Congressional Research
1210 Service explained that there is a substantial amount of
1211 excess capacity, mostly from natural gas plants built during
1212 the last decade, and the Analysis Group also calculated that
1213 the electric sector is expected to have over 100 gigawatts of
1214 surplus generating capacity in 2013.

1215 Chairman Wellinghoff, you discussed this a little bit.
1216 Do you agree with these independent analyses that everyone
1217 should consider plant retirements and the existing excess
1218 capacity as we move forward?

1219 Mr. {Wellinghoff.} Well, certainly I agree that the
1220 planning authorities in considering the resource need for the
1221 future in those planning exercises need to look at not only
1222 potential retirements from the EPA regulations but also the
1223 amount of existing capacity that may be in excess in those

1224 particular regions as well as other resources that we are now
1225 depending upon including demand response, energy efficiency,
1226 distributed generation are all resources that are available
1227 within those planning regions, and in fact, resources that we
1228 require in our rules now, in our Order 890 and in our Order
1229 1000 that the planning authorities consider in doing their
1230 overall assessments.

1231 Ms. {Castor.} I think you are right, because the focus
1232 in this resilient energy, the electric energy sector is not
1233 simply on what is happening with the retirement of old,
1234 inefficient coal plants. It is so much larger than that. In
1235 addition to building, monitoring the excess existing
1236 capacity, we can also--I think the sector can build
1237 additional capacity. The independent analysts also point to
1238 the electric industry's proven track record of quickly
1239 building new capacity when it is needed. For example, the
1240 Congressional Research Service noted that between 2000 and
1241 2003, electric companies added over 200 gigawatts of new
1242 capacity, and that is far more than anyone has suggested will
1243 be needed to offset any retirements resulting from EPA's
1244 rules, and as you mentioned, other options are demand
1245 response, energy efficiency measures that could lower the
1246 amount of generating capacity that the grid would need.

1247 Commissioner Wellinghoff, do you think that this

1248 resilient electric energy sector has the ability to respond
1249 to potential retirements by building new capacity? You
1250 mentioned reducing demand through energy efficiency and
1251 demand response but what do you think?

1252 Mr. {Wellinghoff.} It has the ability to respond in
1253 many ways, and that is ultimately why it is so important for
1254 us to get the market signals right, and that is why EPA is
1255 doing the right thing by getting the market signals right, by
1256 internalizing what are now external costs. If we can
1257 internalize those costs in the price, in the ultimate price,
1258 then we can find the lower-cost alternatives to compete and
1259 come into the market and make appropriate substitutes
1260 economically.

1261 Ms. {Castor.} Commissioner Norris, you indicated in you
1262 testimony that you have reviewed an array of studies and
1263 reports that analyze the potential impacts of EPA rules and
1264 steps that can be taken to cope with any retirements. What
1265 do you think? Do you believe that we have many options
1266 available--excess capacity, energy efficiency, demand
1267 response--for the industry to respond to any retirements and
1268 maintain reliability?

1269 Mr. {Norris.} Yes, that is what I maintained in my
1270 testimony. I can't remember, I think it was Commissioner
1271 Spitzer that made the point, I think most of the studies

1272 indicate we will not have a resource adequacy problem across
1273 the country. There could be localized concerns, and that is
1274 why I maintain that we have tools to address those local
1275 concerns. But we have, and as you noted, the 2002-2003 data,
1276 the adding of 2,000 gigawatts of new capacity in this country
1277 was done in 3 years. That is double, more than double what
1278 the projected retirements might be.

1279 I think it is also important to note--in fact, I will
1280 give you this example. When I was chairman of the Iowa
1281 Public Service Commission, I believe it was 2007, it might
1282 have been 2008, I voted to approve a generation certificate
1283 for a new coal plant but I rejected in the rationale for that
1284 argument that we should build this plant because it produced
1285 X amount of new jobs. Here is why I rejected it. If we take
1286 away jobs in old and inefficient plants, those jobs don't go
1287 away; they shift to more efficient production. That is not a
1288 bad thing for our economy. I am sensitive to the local
1289 concerns but the energy is still needed. It has just moved
1290 the jobs to generate that energy are done in a more efficient
1291 way and a more productive way for our economy.

1292 Ms. {Castor.} Thank you very much.

1293 Mr. {Whitfield.} I am going to just make one comment,
1294 Mr. Norris. This argument about, we have got new jobs over
1295 here, but for the people who lose their jobs, they are gone

1296 and it has the impact on them and their families. So
1297 somebody may be able to pick up a new job in one part of the
1298 country but these people lose their jobs.

1299 Mr. {Norris.} I am entirely sensitive to that, but most
1300 of these will be local reliability concerns, so it is my hope
1301 we can build new gas plants or build transmission at other
1302 facilities that help address the reliability concerns that
1303 may result from that. I am totally sensitive to people
1304 losing their jobs. Our economy changes a lot, that we
1305 shouldn't hold back efficiency.

1306 Mr. {Whitfield.} Ms. McMorris Rodgers, you are
1307 recognized for 5 minutes.

1308 Mrs. {McMorris Rodgers.} Thank you, Mr. Chairman, and
1309 thank you, everyone, for your testimony and for being here
1310 today.

1311 I come from eastern Washington, the Pacific Northwest,
1312 where the majority of our baseload is reliable, renewable
1313 hydropower, and I recognize that a lot of the rest of the
1314 country does not have the hydropower facilities and relies
1315 heavily on traditional fuels such as coal for their baseload.
1316 I am concerned about the EPA regulations and the potential to
1317 eliminate 131 gigawatts of baseload power with the assumption
1318 that there will be a one-for-one replacement with renewable
1319 sources, and what we are trying to work on is amending the

1320 implementation timeframe for many of these EPA job-crushing
1321 regulations and give energy producers the ability to meet the
1322 achievable standards in a reasonable timeframe.

1323 What I would like to ask, where I would like to start is
1324 with Commissioner Moeller and Commissioner Spitzer. I think
1325 back to when I was first elected to Congress in 2004, and the
1326 cost of natural gas at that time, there was a concern that it
1327 was going to be going up in cost, and I would like to just
1328 ask, are there reliability concerns associated with becoming
1329 over-dependent on natural gas to generate electricity and
1330 what are the advantages to having a diversified source of
1331 energy?

1332 Mr. {Moeller.} Thank you, Congresswoman. As
1333 Commissioner Spitzer said and as I said in my written
1334 testimony, I am fuel-neutral. I think we need all fuels. I
1335 am a particular believer in hydropower, as you know. And we
1336 have to be concerned about becoming dependent on any source
1337 of fuel. The key is that 3 years ago we wouldn't have been
1338 having this kind of discussion because natural gas prices
1339 were three times what they are now. They are down for two
1340 reasons. To some extent, economic output it down, but we
1341 have also had come on the system this incredible resource of
1342 domestic shale gas, and that has had worldwide implications,
1343 and if you look at the futures markets, which could be wrong,

1344 we are looking at a decade or so of moderate natural gas
1345 prices. Of course, that can change. But for this gas to
1346 take the place of coal in baseload generation, you are making
1347 the assumption that it will stay at a moderate price and we
1348 will also have to expand the pipeline network in this
1349 country. That is not done overnight. It can be done. I
1350 think our staff in the Office of Energy Projects does an
1351 excellent job of certificating projects in a safe manner but
1352 it takes time, and I think you will have utilities and other
1353 entities testify to that effect.

1354 Mr. {Spitzer.} Mr. Chairman, Congresswoman, natural gas
1355 is a wonderful success story for the ratepayers in the United
1356 States and it happened when the market signals sent price
1357 signals and new technology emerged, the horizontal drilling
1358 and the fracturing. That was a wonderful technological
1359 innovation. But we needed transmission to get the natural
1360 gas to the load centers, and FERC during my tenure has sited
1361 more miles of interstate natural gas pipelines than any time
1362 in the history of this country as well as natural gas storage
1363 facilities. So it was a combination of government working to
1364 put in infrastructure, steel in the ground, market signals
1365 and technology that created a great resource. I share your
1366 concern about overreliance on one particular fuel. I think
1367 we need all fuels, and obviously there is concern among those

1368 in the gas-producing sector that there may be potential
1369 political or regulatory backlash towards their fuel but there
1370 is room for all fuels.

1371 A final point. The reason I am so concerned about the
1372 issue of forcing a generator to serve two masters, FERC's
1373 authority under Section 215 of the Federal Power Act to
1374 impose reliability penalties and potential EPA penalties. I
1375 share a trait in common with a former Member from your
1376 district who represented your district. For 25 years I was a
1377 tax lawyer representing taxpayer against the IRS, and there
1378 are some entities that are quite capable of conducting
1379 litigation against the federal government but for other
1380 entities it is a very daunting task, and it fills many with
1381 trepidation. And so I think for the reasons I stated in my
1382 testimony, it behooves both regulators to do everything they
1383 can to avoid creating this Hobson's choice where you will
1384 find yourself in violation of one rule or another. I am
1385 confident that we can do that.

1386 Mrs. {McMorris Rodgers.} Thank you. I have another
1387 question. Would the two of you describe some of the sunk
1388 transmission costs consumers are left paying when a power
1389 plant retires prematurely?

1390 Mr. {Moeller.} Some transmission costs would probably
1391 be determined on a very locationally specific matter but I

1392 think another concern would be that if again you have a
1393 smaller plant, say, between two larger towns that is needed
1394 for voltage support of the system, it doesn't put out a lot
1395 of energy but it puts the right amount of voltage support in,
1396 that would have to be replaced perhaps by more expensive and
1397 expansive transmission build-outs or another power plant in
1398 another place. That I think may even be a more significant
1399 cost than the sunk transmission costs.

1400 Mr. {Spitzer.} Mr. Chairman, Congresswoman, Congress
1401 has recognized the need for transmission and authorized FERC
1402 to pursue transmission aggressively in many forms, and that
1403 is certainly--steel in the ground is important but the
1404 hypothetical you allude to about potential sunk costs, I
1405 think highlights the need for granular and iterative analysis
1406 by the State commissioners, who you will hear from, from the
1407 planning authorities and from the generators who through
1408 various opportunities to retrofit or repower power plants can
1409 make economic decisions based upon market forces.

1410 Mr. {Whitfield.} At this time I will recognize the
1411 gentleman from Washington, Mr. Inslee, for 5 minutes.

1412 Mr. {Inslee.} Thank you. I am concerned about this GOP
1413 effort, not just for issues of public health but because I
1414 think it will adversely impact job creation in the United
1415 States, and this is a job-killing effort by the GOP and an

1416 effort to hang on to some old, inefficient economic activity
1417 rather than to create thousands of new jobs that would be
1418 associated with making our economy more efficient and more
1419 healthy, and I think the evidence is quite powerful in that
1420 regard.

1421 I would point to a study that our next witness, Dr.
1422 Susan Tierney, will talk about suggesting that between 2010
1423 and 2015, capital investments in pollution controls and new
1424 generation will create an estimated 1.46 million jobs, or
1425 about 291,577 year-round jobs on average for each of these 5
1426 years. Transforming to a cleaner, modern fleet through
1427 retirement of older, less-efficient plants, installation of
1428 pollution controls and construction of new capacity will
1429 result in a net gain of over 4,254 operation and maintenance
1430 jobs across the eastern interconnection. The largest
1431 estimated job gains are in Illinois, 122,695; Virginia,
1432 123,014; Tennessee, 113,138; North Carolina, 76,976; and
1433 Ohio, 76,240. Every single one of those jobs is at risk
1434 because of this wrongheaded, archaic, backward thinking of
1435 the GOP to think that we live in a static economy that
1436 doesn't create jobs when we go through transition, and this
1437 transition to a healthier United States is not just based on
1438 breathing or cardiovascular activity. It is based on job
1439 creation for thousands of new jobs. And this is an attack on

1440 jobs in my district, in my State. I will just mention some
1441 of them.

1442 In Moses Lake, Washington, we make the substrate for
1443 solar cells, the largest manufacturer in the western
1444 hemisphere in Moses Lake, Washington. This bill is an attack
1445 on those jobs. In Seattle, Washington, we are making
1446 efficiency improvements. In Spokane, we have a company
1447 called Itron that is making products for the smart grid that
1448 is more efficient so we don't waste as much electricity.
1449 This bill is an attack on those jobs because it allows the
1450 continued pollution that damages our health and retards the
1451 creation of thousands of new jobs in these new industrial
1452 sectors.

1453 So this bill is a job-killing job on a net basis. Yes,
1454 there is dislocation associated with any transition but we
1455 have got to understand that we have as many jobs to gain as
1456 we have to lose if we play our cards right, and some of these
1457 rules, as contentious as they are, recognize the value of new
1458 technologies. So I want to note, there seems to be some
1459 discussion that the only jobs that count are one coal plant
1460 in a Midwestern State. There are jobs all over the country
1461 that are at stake in this regard that will be lost if this
1462 bill becomes law and we stop the creation of all of these
1463 jobs.

1464 And by the way, it is not just in the high-tech field.
1465 In my State, we have steel workers, iron workers, carpenters,
1466 laborers and longshoremen in the production of these new
1467 jobs. Just look at one wind turbine that goes up, and we
1468 have had a huge expansion of wind power in the State of
1469 Washington. One wind turbine, we ship stuff in, a
1470 longshoreman has got a job. Driving it up to eastern
1471 Washington, a Teamster has a job. Putting it up, a laborer,
1472 a carpenter and an iron worker have a job. Stringing the
1473 wire to the wind turbine, an IBEW member has a job. Those
1474 jobs are at risk when we say that we are going to leave these
1475 old, dirty, polluting, unhealthy things at risk, and that is
1476 what is at risk and that is why I am opposed to this effort,
1477 besides the fact that we have got folks that want to be able
1478 to breathe.

1479 Now, that is much more of a statement than a question,
1480 but if any of our panel would like to comment or criticize
1481 that statement, I would be happy to allow them to do so.
1482 There are no takers, and thank you for your agreeing totally
1483 with my position.

1484 Mr. {Whitfield.} Thank you for that wonderful
1485 statement.

1486 Mr. McKinley, you are recognized for 5 minutes.

1487 Mr. {McKinley.} The Congressman sure left the door wide

1488 open. There are just so many things to go on in these 5
1489 minutes. Let me just address that one issue that was just
1490 brought up. Gina McCarthy was here just last week on this
1491 panel, and that question was raised to her, that very study I
1492 think that he is referring to that talked about 1-1/2 new
1493 jobs for every \$1 million in environmental pollution controls
1494 put in effect, and she was asked about that, and she
1495 repudiated the study, said that was done independently and it
1496 doesn't wash. We used the example of a sawmill plant that
1497 was under the boiler MACT that it is going to cost them \$6
1498 million, and we asked her if she was going to create nine
1499 jobs, and she just laughed. She said that is the silliness
1500 of some of this, some of these reports that come out. They
1501 don't create new jobs; they destroy jobs.

1502 And as far as the IBEW, it is my understanding, I have
1503 got correspondence from them that they oppose a lot of these,
1504 even though it does create short-term construction jobs.
1505 They understand the long-term impact of higher utility bills,
1506 what it is going to do to the American economy if we do place
1507 all these and raise our utility bills. It is one of the
1508 things we have very effectively--we have powerhouses
1509 throughout West Virginia, very effective with AEP, First
1510 Energy. These are some of the leaders in the Nation in what
1511 they have done in producing very effective power.

1512 But my question back to the chairman, Mr. Wellinghoff,
1513 has to do with--it is my understanding--I am just 8 months
1514 into this job, and I saw the--it absolutely is accurate that
1515 there is a mindset here in Congress that I have come to
1516 understand attacking coal. Coal is the backbone of West
1517 Virginia, and it is crucial, but it wasn't until I came to
1518 Congress, Mr. Chairman, that I realized how much there was
1519 this attack on coal, and what I saw was the power plants were
1520 not shutting down. These powerhouses were not shutting down
1521 until the EPA started raising the regulations. They were
1522 meeting the standards currently but then when they raised the
1523 standards, these powerhouses said maybe they are going to
1524 shut down. There have been announcements of three to five
1525 plants in West Virginia that are going to shut down because
1526 of these regulations, but they were meeting the current
1527 standards until the new standard came into effect, and a new
1528 standard at a time when we have no jobs created whatsoever
1529 last month, 14 million people out of work. I think that is
1530 all that we are asking for, is this the time to be
1531 implementing new standards.

1532 So my question to you is, if it comes down to health
1533 issues, saving a person's health of saving a person's job,
1534 what would you recommend specifically?

1535 Mr. {Wellinghoff.} Thank you for that question,

1536 Congressman McKinley. It is my purview to recommend either.
1537 My purview is to recommend that we have a more efficient
1538 electric system and that markets in this country, I think we
1539 can rely on markets in this country to determine how that
1540 electric system should operate, and so what I advocate is
1541 that we do everything we can to make sure that those markets
1542 are structured properly and they are not jerry-rigged. If we
1543 can structure the market properly, that means we need to
1544 incorporate all the costs of a particular product in that
1545 market.

1546 Mr. {McKinley.} That is just about as evasive as all
1547 the other panels have been when I have asked those questions,
1548 but I appreciate it. It is not your responsibility but it
1549 something we face.

1550 I am not in the health industry; I am not in the coal
1551 industry. But the job that has been thrown to me is to try
1552 to make a decision. You hear the things that we are
1553 challenged with, the remarks earlier today that this is a
1554 jihad. That kind of incendiary language has no place in
1555 this. This is why America is rejecting the discourse here we
1556 have in Congress when those kinds of comments are getting
1557 made. I don't want us to be portrayed as being pro-
1558 pollution, that I am polluting the water, I am putting
1559 mercury in the water and the air, that I am trying to kill

1560 children. I want us to have an open dialog where we can have
1561 these kinds of discussion because that is the decision we
1562 have to make, not emotional but a scientific basis. I happen
1563 to be an engineer in Congress, and I hope we can use our
1564 science to make these decisions rather than emotion.

1565 Thank you very much for your testimony.

1566 Mr. {Wellinghoff.} Thank you.

1567 Mr. {Whitfield.} Thank you.

1568 At this time I recognize the gentleman from California,
1569 Mr. Waxman.

1570 Mr. {Waxman.} Thank you, Mr. Chairman, and I want to
1571 thank Mr. McKinley for his last comments. I fully agree with
1572 him and I look forward to working with him to reduce some of
1573 the rhetoric and see if we can work together.

1574 Chairman Wellinghoff, some members of the committee and
1575 several of the witnesses in their written testimony are
1576 citing the FERC's staff's informal assessment of the
1577 potential impacts of EPA rules as evidence that 81 gigawatts
1578 of coal generation is likely or very likely to retire. It is
1579 important for members to understand that the FERC staff is
1580 trying to do, how they did it, and the serious limitations of
1581 the informal assessment.

1582 The FERC staff who worked on this informal assessment
1583 briefed the committee staff. They told our staff that the

1584 informal assessment was intended as a back-of-the-envelope
1585 calculation to produce a ballpark estimate of potential
1586 retirement that could result from the EPA's rules. They said
1587 it was never intended as information for the FERC
1588 commissioners or to be relied on for decision-making.

1589 Chairman Wellinghoff, does this description match your
1590 understanding?

1591 Mr. {Wellinghoff.} It does, and I actually mentioned
1592 earlier that that number should in no way be used as a
1593 planning number. The planning determinations will be those
1594 that will be ultimately done by the planning authorities and
1595 so all the range of numbers that we have thrown out there and
1596 floating around out here are really irrelevant. What is
1597 really relevant is the actual work that each planning
1598 authority will do, and you will hear from a couple in the
1599 next panel. The actual work that the planning authorities
1600 will do and they do on an ongoing basis, it is not that they
1601 are going to start it all of a sudden because EPA has done
1602 this. They have been doing it for years and year and years.
1603 We have now put in place some rules that actually require
1604 them to incorporate into those planning activities
1605 considerations of things like federal and State regulations
1606 that in fact could impact their planning, and many of them
1607 have been doing it already despite our rules. We wanted to

1608 make sure that it was something that was actually being done.
1609 And so we have given them that tool and they are now--I
1610 expect fully that they will use it.

1611 Mr. {Waxman.} I appreciate your putting that in
1612 perspective. The FERC staff started this project in the
1613 summer of 2010 before EPA had proposed or finalized certain
1614 rules so the FERC staff made assumptions about what the EPA
1615 rules would require.

1616 Chairman Wellinghoff, did these assumptions turn out to
1617 be accurate?

1618 Mr. {Wellinghoff.} No, they weren't accurate.

1619 Mr. {Waxman.} For example, FERC staff assumed that EPA
1620 would require closed-loop cooling systems under one rule but
1621 EPA's proposed rule did not require this approach. FERC
1622 staff explained how they actually did their assessment. They
1623 relied on publicly available information about existing coal
1624 plants. They came up with factors they thought could affect
1625 the cost of compliance at these plants and then assigned
1626 those factors subjective weights. For example, if a plant
1627 has no mercury controls, that was worth two-tenths of a
1628 point. If it was an anti-coal State, whatever that means, it
1629 got another tenth of a point. The FERC staff told our staff
1630 that this weighting was ``completely arbitrary.'' Then the
1631 staff added up all of the weighted factors that applied to a

1632 plant and placed the plant in a category such as very likely
1633 or unlikely to retire. The total scores that would lead a
1634 plant to be placed in one of these categories was also just
1635 arbitrarily made up. This description isn't meant as a
1636 criticism. The staff was just trying to do a back-of-the-
1637 envelope estimate.

1638 Mr. Wellinghoff, is this your understanding how the FERC
1639 staff did their informal assessment?

1640 Mr. {Wellinghoff.} They did, and I do want to make
1641 clear, it had nothing to do with the level of competency of
1642 my staff. They used the information that they had at the
1643 time to do a very informal assessment to start discussions
1644 with the EPA so then EPA could be better informed about who
1645 they needed to talk to in more specificity, that is, the
1646 planning authorities with respect to the potential impacts of
1647 what they were doing.

1648 Mr. {Waxman.} The first time they did this assessment
1649 in July 2010, the estimate was that 81 gigawatts of coal
1650 generation were likely or very likely to retire, but as the
1651 staff obtained more information about what EPA's rules
1652 actually required, later calculations produced lower
1653 estimates. In October 2010, the estimate was down to 72
1654 gigawatts. By early 2011, the estimate had dropped to
1655 between 54 and 59 gigawatts of likely or very likely

1656 retirements. Isn't that right, Mr. Wellinghoff?

1657 Mr. {Wellinghoff.} That is correct. Actually, the
1658 February 2011 range is 54 to 59 gigawatts. Again, these are--

1659 Mr. {Waxman.} Let me just, because I am running out of
1660 time. Even for these lower estimates, there was no estimated
1661 timeframe for retirements. FERC staff never examined how the
1662 industry could compensate for any retirements with new
1663 generation capacity, retrofits, demand response or energy
1664 efficiency measures. To make sure everyone is clear on this
1665 point, is the FERC staff informal assessment something that
1666 members of the committee or witnesses should be relying on or
1667 citing when assessing the potential impacts of EPA's rules?

1668 Mr. {Wellinghoff.} No.

1669 Mr. {Waxman.} Thank you very much, Mr. Chairman.

1670 Mr. {Whitfield.} At this time I recognize the gentleman
1671 from Texas, Mr. Barton, for 5 minutes.

1672 Mr. {Barton.} Thank you. I was hoping in my absence,
1673 Mr. Chairman, that you all worked all this out.

1674 Mr. {Whitfield.} It has been very pleasant.

1675 Mr. {Barton.} There is still hope.

1676 My first question to the distinguished chairman of FERC
1677 is that several times in answer to questions, you have used
1678 the term ``irrelevant.'' Do you consider the FERC staff to
1679 be irrelevant?

1680 Mr. {Wellinghoff.} No, sir, I don't.

1681 Mr. {Barton.} Do you assume them to be honest,
1682 hardworking professionals who when asked to do something give
1683 it their best effort?

1684 Mr. {Wellinghoff.} Yes, sir, I do.

1685 Mr. {Barton.} Okay. I agree with you, that to my
1686 knowledge the FERC staff is hardworking and very
1687 professional. In fact, I would say of all the agencies we
1688 deal with, the FERC staff is probably the least politically
1689 motivated or impacted. They tend to be very straightforward
1690 and professional, in my assessment, anyway. Are you aware
1691 that we have got a list of 14 different organizations that
1692 have looked at the impact of the EPA's rules on the power
1693 market and 12 of the 14 are basically in the general range of
1694 the FERC staff assessment? Are you aware of that?

1695 Mr. {Wellinghoff.} Yes, and again, I would indicate
1696 that those assessments are irrelevant as well, and I am not
1697 saying that there is--

1698 Mr. {Barton.} There is no assessment that is relevant?

1699 Mr. {Wellinghoff.} There is one, yes. The assessments
1700 that will be done by the individual planning authorities like
1701 ERCOT in your State, for example, PJM, the other RTOs and the
1702 planning authorities, those assessments that the planning
1703 authorities conduct are ones that in fact will be most

1704 informed at a local level based upon actual data with respect
1705 to actual specific resource requirements and resource needs
1706 and resource availability within those regions. Those are
1707 the critical--

1708 Mr. {Barton.} I would respectfully interrupt you, Mr.
1709 Chairman, and respectfully disagree with you that I think for
1710 whatever reason these groups that have looked at this issue
1711 are trying to give it their best estimate, if that is the
1712 right term, and I think they are relevant. I think it is
1713 odd, to be as mild as possible, that EPA consistently
1714 underestimates the impact of their rules, and, you know, I
1715 took probability in college, and I would say the probability
1716 is that EPA is going to be the most off in terms of
1717 realistically estimating what their impact is of all the
1718 groups because they have a bias against realistically
1719 evaluating their rules. And just in one of the rules that
1720 they proposed last year, their analysis, they admitted
1721 eventually was only off by a factor of 1,000, which is pretty
1722 off.

1723 I want to ask Mr. Moeller, Commissioner Moeller if you
1724 share the chairman's assessment about the irrelevancy of
1725 these estimates.

1726 Mr. {Moeller.} Well, I think the estimates are all
1727 informative but I probably share his opinion that what really

1728 matters is how they impact operations and reliability at the
1729 local level because of the specifics of load pockets and the
1730 physics of electricity flow, and I actually thought the FERC
1731 staff study was pretty good because it went into a lot of the
1732 variable factors. It was an estimate. It was done with what
1733 they knew at the time. Things have changed. But I commend
1734 our staff for what I thought was a very good document.

1735 Mr. {Barton.} I have only got about a minute. My last
1736 question, again, back to our distinguished chairman, you
1737 state in the letter that you think your organization lacks
1738 the data and the tools to fully assess the reliability impact
1739 of EPA regulation. What additional tools and data would you
1740 need, in your opinion, for the FERC to have that ability?

1741 Mr. {Wellinghoff.} Well, we would have to have the
1742 capability of the modeling that is done by all the regional
1743 planning authorities, and their modeling is extremely
1744 extensive with very sophisticated computer models and lots of
1745 computer equipment. PJM alone has 500 employees, I believe,
1746 and that is just one planning authority in and of itself. So
1747 again, we are not a central planner. We are not set up to be
1748 a central planner, and to do that would take a great deal of
1749 appropriations from this Congress that I don't think they
1750 really want to do.

1751 Mr. {Barton.} My time is expired, but is there any

1752 reason then that the FERC couldn't send a letter or make a
1753 request of the folks that have this modeling capability if
1754 you gave them the data sets that they couldn't do the
1755 modeling and report back to you? Is that allowed or not
1756 allowed?

1757 Mr. {Wellinghoff.} No, they have the data sets. We
1758 don't have it. They have it. They do the modeling already
1759 all the time, and you will hear from two of them. You will
1760 hear from ERCOT and PJM in your next panel.

1761 Mr. {Barton.} If the FERC staff under the direction of
1762 the Commission were to request certain models be run, then
1763 you have the authority to do that and they would have to
1764 comply. Is that correct?

1765 Mr. {Wellinghoff.} We could ask them to do modeling.
1766 That is correct.

1767 Mr. {Barton.} I have got some other questions. If I
1768 could have one non-related question. The former chairman of
1769 the FERC, Mr. Kelleher, called me this week, and the
1770 Department of Energy is floating an idea to give the delegate
1771 its authority under the Energy Policy Act to do transmission
1772 siting. Under current law, the DOE has to determine the
1773 corridor, but once the DOE determines that it is a high-
1774 priority, high-impact corridor, then the FERC can put
1775 together a plan to site transmission. There is a court case

1776 in Virginia that invalidated or at least called into question
1777 the ability of the Department of Energy to site these
1778 corridors, and the current Secretary is considering
1779 delegating his authority under the Energy Policy Act to the
1780 FERC. Do you have a position on that, Chairman?

1781 Mr. {Wellinghoff.} Yes, Mr. Barton. I think actually
1782 that would be an appropriate delegation. I think it would in
1783 fact make the current statute work more efficiently.

1784 Mr. {Barton.} Do all the commissioners share the
1785 chairman's position on that?

1786 Mr. {Moeller.} Congressman, I favor the proposal
1787 generally but I had a little bit of an issue with the dual
1788 siting track that was part of the details. So generally,
1789 yes, some of the specifics I don't fully--

1790 Mr. {Barton.} I will follow up with that.

1791 Thank you, Mr. Chairman, because I am the author of that
1792 section and I have been asked to take a position on it, and I
1793 see both sides of it, so I appreciate the information.

1794 Mr. {Whitfield.} Mr. Olson, you are recognized for 5
1795 minutes.

1796 Mr. {Olson.} I thank the chair, and thanks to all the
1797 witnesses for coming today, for giving us your expertise and
1798 your time, and we are in the home stretch here, so I will get
1799 my 5 minutes done here.

1800 My first question is for you, Mr. Moeller, and this may
1801 be an understatement, but you seem to view FERC's role in
1802 addressing potential impacts of EPA regulations on electric
1803 reliability very differently from Mr. Wellinghoff and some of
1804 your colleagues at FERC. You note in your testimony that
1805 legislation clarifying the role of EPA and FERC in the event
1806 of a conflict over air policy electric reliability could be
1807 helpful, and my colleague, Mr. Shimkus, showed this graph
1808 which illustrates the disparity between EPA and all the other
1809 groups that are taking a look at the capacity loss resulting
1810 from EPA's power sector rules, and I know this is a small
1811 graph here but you all can see this little green line here,
1812 the very small one is what EPA's predictions are. FERC is
1813 right here, the first line. That is a big disparity.

1814 My question is, is there a conflict between FERC and EPA
1815 over any of EPA's new rules affecting the utility companies?

1816 Mr. {Moeller.} Well, Congressman, I haven't been
1817 involved all of the discussions. There have been staff
1818 discussions. Some of the individual commissioners have met
1819 with officials from EPA. I have had one such meeting, and I
1820 have called for a more open process so that we can discuss
1821 the ramifications from a reliability perspective of these
1822 rules because there are a number of them. The timelines
1823 differ. They will affect different markets differently. For

1824 instance, in a Texas market where it is a competitive market,
1825 the costs to, say, retrofit a plant cannot be passed on to
1826 ratepayers. They have to be absorbed by shareholders. In
1827 another area of the country that is vertically integrated,
1828 those costs can be passed on. That is going to make a
1829 difference as to the investment decision involved as to
1830 whether to keep a plant or not. I just think that the level
1831 of detail and the complexity of this Nation's electric system
1832 calls for a more open process to determine some of the
1833 ramifications of these rules.

1834 Mr. {Olson.} Thank you for that answer. I will just
1835 kind of follow up on that question, and this would be all for
1836 the commissioners. I posed this question to Mr. Joseph
1837 McClelland of FERC during his testimony here on May 31st on
1838 the grid reliability and infrastructure defense but he was
1839 unable to give me an accurate answer, so I will ask again,
1840 but I wanted to preface it but since that time I visited the
1841 power plant in the district I represent, the WA Parish plant
1842 there outside of Meadville, Texas. It is one of the largest
1843 power generation plants in the country, the largest one in
1844 Texas, obviously. It has four coal generating units, four
1845 natural gas generating units, and I was out there talking
1846 with them about some of the problems we could face in Texas
1847 in the future with this drought, it looks like another El

1848 Nino, La Nina effect and, you know, extended heat waves, and
1849 I talked to them about we have got the fastest growing
1850 population in America. I asked them if they have some plans
1851 to cover the generation capacity that they might have to
1852 cover, and they do say that they have kind of mothballed two
1853 plants there in Texas, two coal-burning plants, that they
1854 could bring up online in a couple of weeks if so needed. My
1855 question is, if FERC had to require or order a generating
1856 unit to operate for reliability purposes and doing so would
1857 result in the unit exceeding environmental permit level,
1858 would FERC indemnify the operator from any and all agency
1859 actions for private citizen lawsuit liability? Commissioner
1860 LaFleur, you are first, ma'am.

1861 Ms. {LaFleur.} I don't believe we would indemnify but I
1862 think that we would try to work out in advance with the other
1863 agencies to make sure that if we ordered a plant to operate
1864 that they would not face compliance violations, and I know
1865 there also have been legislative proposals, surgical
1866 proposals to remove individual liability to individuals for
1867 operating in response to a FERC order, and if there is a need
1868 for clarity, I would suppose those, but we would certainly
1869 try to work out that there was no compliance violation.

1870 Mr. {Olson.} Thank you.

1871 Commissioner Norris?

1872 Mr. {Norris.} I believe it is a situation Mr. Spitzer
1873 has addressed a couple times during the hearing here, and
1874 that is, it is an unfair situation to put a utility company
1875 where they have to abide by two different agencies' rules,
1876 FERC's and EPA's, and while I don't know if we can--we can't
1877 protect them from that agency suing them. I think there is
1878 some proposed legislation--I can't think of the name of it--
1879 to address that situation and I think it would be a positive
1880 outcome.

1881 Mr. {Olson.} Mr. Spitzer, I am sorry I didn't hear our
1882 testimony before, sir, but it sounds like, did Commissioner
1883 Norris give an accurate summary of your feelings?

1884 Mr. {Spitzer.} Yes, correct, Congressman. In my
1885 testimony, I discussed a safety valve proposal proposed by
1886 some of the entities including ERCOT, and we can supply you
1887 with this. It is comments they filed before EPA on May 3,
1888 2011, that I would support that resolves this potential
1889 Hobson's choice of complying with--violating either an EPA
1890 rule or FERC reliability standard, and I suggest that
1891 proposal could solve that problem.

1892 Mr. {Olson.} Commissioner Moeller?

1893 Mr. {Moeller.} I agree. It is a problem, and I think
1894 if you talk to entities who had to face this situation in the
1895 past, they won't do it again because it is too risky having

1896 two agencies, choosing to violate one set of rules or the
1897 other.

1898 Mr. {Olson.} That was my experience with Parish. They
1899 are willing to do it but they won't do it if they can't be
1900 covered legally.

1901 And Mr. Chairman, I am sorry, last but certainly not
1902 least.

1903 Mr. {Wellinghoff.} Thank you, and I agree with the
1904 safety valve solution that Commissioner Spitzer discussed. I
1905 think that is a remedy that in fact would take care of the
1906 issue.

1907 Mr. {Olson.} Thank you, Mr. Chairman.

1908 Mr. {Whitfield.} Mr. Terry, you are recognized for 5
1909 minutes.

1910 Mr. {Terry.} Thank you, Mr. Chairman.

1911 To start off, I have three documents I would like to
1912 enter into the record.

1913 Mr. {Whitfield.} Without objection.

1914 [The information follows:]

1915 ***** COMMITTEE INSERT *****

|
1916 Mr. {Terry.} The first is a letter from our Governor to
1917 Administrator Jackson expressing his concerns with the number
1918 and substance of the regulations. The second is an article
1919 from the Grand Island Independent discussing the now-expected
1920 closure of the Grand Island coal-fired plant as a result of
1921 CSAPR. And the last is an article from the Lincoln Journal
1922 Star that just ran yesterday regarding the same issue. Thank
1923 you, Mr. Chairman.

1924 It is interesting, I know that this issue has been beat
1925 to death, but just as a comment, I thought one of FERC's
1926 responsibilities was gathering data and providing models so
1927 that entities could make the right decisions, that FERC could
1928 make the right decisions, so learning that that is--you don't
1929 have the data or you don't have the modeling techniques, and
1930 I am kind of confused why you have 120 employees in a sub-
1931 agency or sub-department called modeling. So Mr. Chairman, I
1932 think we have an area that we can save money. We should
1933 provide that information to the chairman who is part of the
1934 super committee. I don't think those 120 employees--I don't
1935 know what they do but they obviously aren't doing what the
1936 title says, so we could probably save money by eliminating
1937 that.

1938 Next, getting back to the issue of the news stories and

1939 our State Attorney General, who hosted a regional event based
1940 on the CSAPR rule, this newest version certainly is more
1941 stringent than the proposed rule, the Clean Air Transport
1942 Rule, so as CSAPR becomes effective in 3-1/2 months--and this
1943 is for Mr. Wellinghoff and Mr. Moeller, and we will let Mr.
1944 Wellinghoff, the chairman, be first. As CSAPR becomes
1945 effective in just 3-1/2 months, are you concerned that States
1946 like Nebraska may not have enough time to adequately prepare
1947 for CSAPR's substantial increased requirements?

1948 Mr. {Wellinghoff.} Congressman Terry, thank you. I
1949 would first clarify your previous discussion. We don't have
1950 any division called modeling so I am not sure where you are
1951 getting that information from.

1952 But with respect to the CSAPR rule, I believe again that
1953 the planning authority that would encompass Nebraska and the
1954 State commissioners in Nebraska as well ultimately would have
1955 full authority and ability with respect to their modeling
1956 capabilities and their resource planning capabilities to plan
1957 for these contingencies.

1958 Mr. {Terry.} You are right, and I should have said the
1959 title of it correctly but I think the one that we can
1960 eliminate is the Office of Electric Reliability.

1961 Mr. {Moeller.} Congressman, to answer your question,
1962 yes, I am concerned because of the timeline of CSAPR and I

1963 think you will hear an articulate description of Texas's
1964 concerned from the ERCOT representative on the next panel.

1965 Mr. {Terry.} Thank you.

1966 Now, hearing those answers then, would it be justified
1967 in your opinion to delay the implementation of this rule so
1968 the States and entities can have a better grasp of its
1969 impact, Mr. Wellinghoff?

1970 Mr. {Wellinghoff.} I do not believe it to be
1971 appropriate to delay the rule.

1972 Mr. {Moeller.} I frankly don't know the implications
1973 enough to know where it is worth delaying or not but I know I
1974 would like to be a lot more comfortable about the reliability
1975 implications of it.

1976 Mr. {Terry.} Thank you.

1977 Mr. {Whitfield.} Thank you.

1978 At this time I recognize the gentleman, Mr. Gardner from
1979 Colorado, for 5 minutes.

1980 Mr. {Gardner.} Thank you, Mr. Chairman, and thank you
1981 for joining us today.

1982 Commissioner Norris, you stated in your testimony that
1983 you believe, and this is a quote, you believe that the ``EPA
1984 had adequately addressed reliability concerns.'' You base
1985 this conclusion not on FERC's own analysis but various
1986 studies, in your words, ``numerous studies by multiple

1987 entities that attempt to assess the reliability impact of
1988 EPA's proposed and final regulations.'' You have talked
1989 about those and you claim that you found those publicly
1990 available assessments and analyses the most informative for
1991 reaching your conclusions. Specifically, you cite in your
1992 testimony reports done by, amongst other, the Bipartisan
1993 Policy Center, M.J. Bradley and Associates.

1994 Mr. Norris, I don't think any of those organizations
1995 work for FERC or work within FERC but yet you are relying
1996 upon them and you are statutorily tasked with the
1997 responsibility of ensuring the reliability of the bulk power
1998 system. Do you believe, do you agree with members of this
1999 committee that perhaps FERC should be--that we should be
2000 concerned that a commissioner of FERC, the agency that has a
2001 prominent role in assuring reliability of the grid, is basing
2002 conclusions with respect to EPA's power sector rules on
2003 reports completed not by FERC but by outside interest groups
2004 with zero accountability to FERC or the American people?

2005 Mr. {Norris.} Let me start with saying I think those
2006 reports, they told us some consistent feedback on the
2007 situation. One is that there is not likely to be a resource
2008 adequacy problem nationwide. We have supplies or we can
2009 build supplies or build generation in time to address the
2010 overall generation needs of this country. I think that is

2011 consistent throughout all those reports. I think there are a
2012 lot of very knowledgeable folks of our electric system that
2013 work on those reports and provide information that I found
2014 valuable. I like to seek outside input when I come to a
2015 conclusion, and I did extensive research and reading multiple
2016 reports. I point at those as the most informative, and I
2017 think they represent a cross-section. There are differences
2018 in those reports but the consistent theme I saw in them was,
2019 we can meet our Nation's electric supply needs under the many
2020 different scenarios run.

2021 Secondly, the other consistent thing in that report as I
2022 stated earlier is the natural gas impact is having on the
2023 marketplace in general in terms of retiring old, inefficient
2024 plants. So, yes, I rely on those reports and I will continue
2025 to rely on those and other knowledgeable reports and how the
2026 proposed EPA rules may impact our system.

2027 Mr. {Gardner.} Do you think it is wise to rely on
2028 outside reports so heavily, though?

2029 Mr. {Norris.} Well, I probably erred in not putting our
2030 own report in there because I read that extensively as well.
2031 Yes.

2032 Mr. {Gardner.} And a question based on Ms. LaFleur's
2033 testimony. She stated in her second paragraph, third
2034 paragraph of her opening statement, ``Although not all these

2035 regulations are final, I believe it is important to consider
2036 them as a package when assessing their potential effect on
2037 reliability,' ' talking about the effect of the rules
2038 together. There has been legislation introduced in Congress
2039 that talks about the effect of EPA regulations on energy
2040 costs and prices. Do you think that those ought to be looked
2041 at together as well in addition to reliability, what it does
2042 for cost? And Mr. Moeller, I will start with you.

2043 Mr. {Moeller.} Well, it is kind of society's choice as
2044 to the costs of health regulations versus the increases in
2045 electricity prices, but I think most studies would indicate
2046 that prices are going to rise and there is a variety of
2047 studies as to how much they will rise in different areas,
2048 depending on how dependent they are on certain fuels,
2049 particularly coals, but--

2050 Mr. {Gardner.} Do we have a mechanism to look at the
2051 costs cumulatively, as Ms. LaFleur says, on reliability, just
2052 as we do on reliability that she is suggesting that we do?

2053 Mr. {Moeller.} Yes.

2054 Mr. {Gardner.} Mr. Spitzer?

2055 Mr. {Spitzer.} Mr. Chairman, Congressman, my view, and
2056 this goes back to my serve in the State legislature and at
2057 the State commissioner and now at FERC, is government is
2058 about balancing competing interests, and you have air

2059 quality, health issues balanced against the costs and the
2060 Congress doubtless considers that as does EPA, as do the
2061 State commissions. In the narrow issue of reliability, that
2062 is why the aggregate numbers certainly have an impact on
2063 wholesale power prices but there are many other variables
2064 with wholesale power. The natural gas revolution that I
2065 discussed earlier, concern over nuclear power in the wake of
2066 Fukushima may have an impact on our fuel supply.

2067 Mr. {Gardner.} Should we, though, have a system in
2068 place that takes a look at the cost of regulations
2069 comprehensively, cumulatively as they are added to our energy
2070 sector?

2071 Mr. {Spitzer.} I hope this is not gratuitous, but I
2072 think government at all levels has an obligation to
2073 continually revisit the circumstances which change over time.
2074 FERC has a serious mission and all five of us are very
2075 serious about the authority granted by Congress in 2005 in
2076 Section 215 of the Federal Power Act, which is why we are so
2077 zealous with regard to our space in terms of the reliability.

2078 Mr. {Gardner.} Ms. LaFleur, would you take that same
2079 approach that you take on reliability to the cost that
2080 regulations have on energy production?

2081 Ms. {LaFleur.} Well, the point of my comment, I think,
2082 was that the only way to really assess reliability is at the

2083 local level. You know, my former Massachusetts fellow
2084 citizen in this body, Tip O'Neill, said all politics is
2085 local. I would say all reliability is local. So in order
2086 for a plant to decide whether to stay open, they can't just
2087 look at MACT, they have to look at the transport rule and
2088 they have to look at the cost of retrofitting totally. I
2089 think that for a plant deciding whether to stay open, they
2090 should look at all the costs, whether some kind of
2091 macroanalysis of all the costs would be meaningful across the
2092 country, I think you would get the same kind of modeling
2093 issues that we have for all the macroanalyses that go from,
2094 you know, 30 to 80 of how many retirements there would be
2095 because the costs will depend on what decisions people make
2096 how to comply. So I am not sure I think a big macro cost
2097 number is going to be meaningful but I think the individual
2098 units have to look at the costs.

2099 Mr. {Whitfield.} The gentleman's time has expired. I
2100 recognize Mr. Markey for 5 minutes.

2101 Mr. {Markey.} Thank you, Mr. Chairman.

2102 Mr. Chairman, thank you all for being here. How many of
2103 you believe that the threat of a cyber attack on the electric
2104 grid is the top threat to electric reliability in our
2105 country? Is that your belief, Mr. Wellinghoff?

2106 Mr. {Wellinghoff.} I certainly believe that both cyber

2107 and physical security are major issues that we need to be
2108 concerned with respect to maintaining our electric grid.

2109 Mr. {Markey.} Is it at the top of your list of
2110 concerns?

2111 Mr. {Wellinghoff.} Yes.

2112 Mr. {Markey.} Are there any on the panel that do not
2113 have that at the top of their list of concerns? No. So you
2114 all have that.

2115 Well, I agree with you, and last year this committee
2116 unanimously passed the GRID Act, which was co-authored by
2117 myself and Mr. Upton, and that bill gave the FERC the
2118 authority to quickly issue grid security orders or rules if
2119 vulnerabilities have not been adequately addressed through
2120 existing reliability standards or other industry efforts. Do
2121 you believe that giving FERC this authority would increase
2122 America's ability to appropriately respond to threats and
2123 vulnerabilities facing our electric grid, Mr. Chairman?

2124 Mr. {Wellinghoff.} Yes, I do, Mr. Markey.

2125 Mr. {Markey.} Yes or no, each member.

2126 Mr. {Moeller.} I have come around to support FERC
2127 having more authority.

2128 Mr. {Markey.} Thank you.

2129 Yes?

2130 Mr. {Spitzer.} Yes, Congressman.

2131 Mr. {Norris.} Yes. I would give you a little bit more
2132 if you would take it.

2133 Mr. {Markey.} Very briefly.

2134 Mr. {Norris.} Okay. That is because the cyber attacks
2135 have orders of magnitude on reliability. It can wipe out a
2136 whole interconnect. We are talking about in this situation
2137 very localized reliability situations that we currently have
2138 the tools to deal with but we need the tool you are talking
2139 about to deal with cybersecurity.

2140 Mr. {Markey.} And the FERC needs that authority. Do
2141 you all agree with that?

2142 Mr. {Wellinghoff.} Yes.

2143 Mr. {Markey.} Okay, yes.

2144 Ms. {LaFleur.} Yes, I do.

2145 Mr. {Markey.} Based on what industry has done thus far,
2146 do you think that industry is likely to quick move, Mr.
2147 Chairman, to take all necessary steps to secure itself if
2148 FERC is not given the authority contained in last year's GRID
2149 Act?

2150 Mr. {Wellinghoff.} Well, just to be a little fair to
2151 industry, they are setting up a group called the Transmission
2152 Forum and they are trying to move, but I don't know how
2153 quickly they are going to be able to move independently on
2154 their own with a voluntary group.

2155 Mr. {Markey.} Do you think that the FERC has to have
2156 this authority in order to make sure that the voluntary
2157 becomes real? They can work together but in the absence of
2158 FERC having that capacity to mandate a solution, do you think
2159 it will happen?

2160 Mr. {Wellinghoff.} Yes, they can work together but I do
2161 think FERC should have this authority.

2162 Mr. {Markey.} Do you all agree with that? Okay. Well,
2163 that is very important for us to hear because ultimately it
2164 is just not enough in the absence of the FERC having that
2165 authority.

2166 Is there a reason to believe that we will be able to
2167 solve this problem in the absence of legislation passing, Mr.
2168 Wellinghoff?

2169 Mr. {Wellinghoff.} I don't see a solution in the
2170 absence of legislation.

2171 Mr. {Markey.} That is very, very helpful to us, so let
2172 us just hope that this year we can pass that legislation and
2173 then get it passed through the Senate as well, giving that
2174 authority.

2175 Now, the argument here today is that we have some kind
2176 of tension here between the air quality and air conditioning,
2177 and we have to pick one or the other in our country, but let
2178 us focus here on the fact that there are already 13 States--

2179 Connecticut, New Jersey, Delaware, Illinois, Massachusetts,
2180 Maryland, Michigan, Minnesota, Montana, New York, Oregon,
2181 Utah and Wisconsin--who have already required their coal-
2182 fired plants to remove as much or more of their mercury
2183 emissions as has been proposed at the federal level by the
2184 EPA and about 70 percent of coal-fired boilers that submitted
2185 data to EPA already meet the standards for particulate matter
2186 and hydrochloric acid. So it seems that this is possible.
2187 In fact, one example, Illinois receives 46 percent of its
2188 electricity from its 31 coal-fired power plants and has also
2189 reduced its mercury emissions by 90 percent, a level more
2190 stringent than EPA's proposal.

2191 Chairman Wellinghoff, have there been any reliability
2192 problems in Illinois due to their efforts to take the poison
2193 out of the air?

2194 Mr. {Wellinghoff.} To my knowledge, there have not
2195 been, and I assume that is because the planning authority
2196 that encompasses Illinois has taken this into account when
2197 they have done planning.

2198 Mr. {Markey.} Thank you. Now, Massachusetts required
2199 an 85 percent reduction in mercury emissions in 2008, a level
2200 that is also more stringent than EPA's proposal. Were
2201 utilities in Massachusetts able to keep the lights on even
2202 thought this standard was being met, Commissioner LaFleur?

2203 Ms. {LaFleur.} Yes, they were, and there is an example
2204 in Massachusetts of a plant that they are planning to close
2205 right now through gradual planning and transmission
2206 reinforcement just a kind of replacement for old plants that
2207 we are talking about.

2208 Mr. {Markey.} The technology is there--

2209 Ms. {LaFleur.} Yes.

2210 Mr. {Markey.} --in an affordable way. Health gets
2211 protected. Air conditioning gets protected. All we have
2212 here are a certain small number of utilities that are in a
2213 sit-down strike against technological progress. We should
2214 just continue to keep that in mind.

2215 Thank you, Mr. Chairman.

2216 Mr. {Whitfield.} At this time I recognize the
2217 gentleman, Mr. Walden from Oregon.

2218 Mr. {Walden.} Thank you very much, Mr. Chairman. I
2219 want to follow up on what my colleague and friend from
2220 Massachusetts was talking about because he referenced Oregon,
2221 and in the case of the lone coal plant in Oregon, the cost to
2222 ratepayers was going to be roughly \$520 million, so instead
2223 they are closing down that plant over a 10-year frame and
2224 will replace it with either two natural gas plants or some
2225 other alternative. So when they were trying to address the
2226 SO_x, NO_x, and mercury issues, the cost to ratepayers was so

2227 high to meet these requirements that instead they are going
2228 to close that plant, which really raises the question about
2229 reliability. And Section 215 of the Federal Power Act
2230 permits FERC to direct NERC to conduct periodic assessments
2231 of the reliability and adequacy of the bulk power system in
2232 North America.

2233 And I think what we are trying to get at here, at least
2234 I am, is just as we make policy and watch policy being made,
2235 do we have a good basis of information upon which to make our
2236 decisions, and it strikes me that in the EPA's own rule on
2237 whatever page this is, 25,054, it says it is EPA's
2238 understanding that FERC and DOE will work with entities whose
2239 responsibility it is to ensure an affordable, reliable supply
2240 of electricity including State PUCs, RTOs, the NERC to share
2241 information and encourage them to begin planning for
2242 compliance and reliability as early as possible this effort
2243 to identify and respond to any projected local and regional
2244 reliability concerns will inform decisions about the timing
2245 of the retirements and other compliance strategies to ensure
2246 energy reliability, which is what we all want.

2247 Now, Mr. Wellinghoff, so in this initial look at the
2248 potential retirement of coal-fired generation, its effect on
2249 system reliability preliminary results, it talks in here on
2250 page 29 of this handout, which I am sure you are familiar

2251 with, that the industry must be directed to openly assess the
2252 reliability and adequacy impacts of retirement of at-risk
2253 units. Such studies should include frequently response,
2254 voltage profile, bulk power loading, stability loss, load
2255 probability calculations, deliverability of resources through
2256 planning studies.

2257 My question is, given what Mr. Barton just asked about
2258 whether FERC had the authority to request the information it
2259 needs and wants from the regional transmission organizations,
2260 in fact, in the FERC staff presentation, which I think you
2261 referred to as irrelevant, there is this slide I just
2262 referenced which talks specifically about this information.
2263 Have you solicited that information?

2264 Mr. {Wellinghoff.} I want to make very clear that I
2265 didn't suggest, Congressman, that the FERC staff presentation
2266 was irrelevant. What I said was irrelevant was the 80-
2267 gigawatt number would be irrelevant for planning purposes.
2268 Let us make it very clear. For planning purposes, what that
2269 number is again is a back-of-the-envelope number for the
2270 purpose of starting a dialog with EPA as to how EPA can
2271 interact with the planning authorities and those planning
2272 authorities can ultimately continue to do the work that they
2273 have done and will continue to do to ensure that we have a
2274 reliable system in the country.

2275 With respect to all those parameters that you referenced
2276 in that particular presentation, those planning authorities
2277 in fact have been directed by FERC to engage in those
2278 activities under Order 890 and under Order 1000. So we
2279 specifically with respect to those orders ensure that the
2280 planning authorities--

2281 Mr. {Walden.} Related to those EPA rules specifically?

2282 Mr. {Wellinghoff.} Yes. In fact, in Order 1000, we
2283 very specifically say that they must consider both federal
2284 and State public policies which would include the EPA rules.
2285 So yes, we absolutely have done that in Order 1000.

2286 Mr. {Walden.} So you have asked for information, all
2287 these points related to these rules?

2288 Mr. {Wellinghoff.} We haven't asked for information.
2289 We have directed them to in fact incorporate that information
2290 into their planning processes to ultimately conduct their
2291 planning processes that in fact when they conduct those
2292 planning processes take account for things like the EPA
2293 rules.

2294 Mr. {Walden.} Right. So let me try and understand
2295 this. So I would think FERC would play a more direct role in
2296 this.

2297 Mr. {Wellinghoff.} We don't do central planning, and we
2298 don't do planning. It is not our function. You haven't

2299 given us that function. We are not planners. The planners
2300 are--

2301 Mr. {Walden.} So--

2302 Mr. {Wellinghoff.} --the specific regional planning
2303 authorities--

2304 Mr. {Walden.} So what was the purpose of this
2305 preliminary report?

2306 Mr. {Wellinghoff.} The purpose of the preliminary
2307 report was to start the dialog with EPA with respect to
2308 informing them of the planning activities that the planners
2309 conduct and ensure that the planning activity was one that
2310 could be well informed by--

2311 Mr. {Walden.} So what has happened--

2312 Mr. {Wellinghoff.} --the EPA rules.

2313 Mr. {Walden.} --since then?

2314 Mr. {Wellinghoff.} What has happened since--

2315 Mr. {Walden.} Why would--

2316 Mr. {Wellinghoff.} We are continuing the dialog with
2317 EPA. What has happened is that we are directing EPA to in
2318 fact interface directly with the planning authorities like
2319 PJM, like ERCOT and others, and to provide them all the data
2320 that EPA has to help those planning authorities have an
2321 adequate handle on what they need to do to do their job to
2322 ensure reliability in this country.

2323 Mr. {Walden.} But I thought your testimony said you
2324 basically stopped that effort in May.

2325 Mr. {Wellinghoff.} We haven't stopped the effort of
2326 talking to EPA, no.

2327 Mr. {Walden.} All right. My time has expired, Mr.
2328 Chairman.

2329 Mr. {Whitfield.} I think everyone has had the
2330 opportunity to ask questions, and I want to thank the
2331 commissioners for taking time to be with us this morning. I
2332 know it has been a rather lengthy session, and the next time
2333 you come we will try to be a little more--

2334 Mr. {Rush.} Mr. Chairman?

2335 Mr. {Whitfield.} Yes.

2336 Mr. {Rush.} Mr. Chairman, it seems to me that, and I
2337 wanted to say this in the presence of the commissioners here,
2338 that this subcommittee should hold a hearing on the Cross-
2339 State Air Pollution Rule specifically. We have not done so
2340 yet, and I believe that the conversation that we have heard
2341 today really merits such a hearing and I would just ask on
2342 the record that we do conduct a hearing on the Cross-State
2343 Air Pollution Rule.

2344 Mr. {Whitfield.} Well, thank you very much.

2345 Mr. {Walden.} Mr. Chairman?

2346 Mr. {Whitfield.} Yes?

2347 Mr. {Walden.} Can I just--because I have got a conflict
2348 going on here on an answer. Can I ask just--

2349 Mr. {Whitfield.} Sure.

2350 Mr. {Walden.} Mr. Wellinghoff, in your submission back
2351 to the subcommittee on a question that was asked about
2352 continuing communications, your answer, and I am quoting
2353 here, is ``Other than the discussion between Assistant
2354 Administrator McCarthy and I on August 26th, which was
2355 described in supplemental responses to the committee's May
2356 9th information request, communications between FERC staff
2357 and EPA staff have not been ongoing.'' That is your answer
2358 to our question. Now, that is--

2359 Mr. {Wellinghoff.} Not ongoing, that is true, but that
2360 doesn't mean they are not continuing. I mean--

2361 Mr. {Walden.} Oh, I have to get a Webster's out.

2362 Mr. {Wellinghoff.} Since that period of time that we
2363 discussed there, there was no--nothing happened there in that
2364 particular period of time. I had a conversation with Lisa
2365 Jackson yesterday. I mean, we continue to have discussions
2366 all the time.

2367 Mr. {Walden.} Okay. So I have to look up ongoing
2368 versus continuing. I am confused. I understand based on
2369 your written answer here that the staff have not been going,
2370 conversations have not been ongoing, communication between

2371 FERC staff and EPA staff have not been ongoing is your
2372 written response here.

2373 Mr. {Wellinghoff.} Congressman, perhaps that was a poor
2374 choice of words. It meant during that--in that interim
2375 period of time, there were no other meetings. That is simply
2376 all that meant.

2377 Mr. {Whitfield.} I am also going to enter into the
2378 record without any objections a statement from the North
2379 American Electric Reliability Corporation who wanted to
2380 testify but they were unable to do so, so they submitted
2381 their testimony for the record.

2382 [The information follows:]

2383 ***** COMMITTEE INSERT *****

|
2384 Mr. {Whitfield.} And once again, thank you all very
2385 much for being with us. It is also a great privilege to have
2386 the entire Commission here, and we look forward to continued
2387 dialog with you as we move forward, so thank you.

2388 At this time I would like to call up the second panel,
2389 The Hon. Jeff Davis, who is the Commissioner of the Missouri
2390 Public Service Commission; the Hon. Stan Wise, who is
2391 Commissioner of the Georgia Public Service Commission; the
2392 Hon. Jon McKinney, Commissioner of West Virginia Public
2393 Service Commission; and Mr. H.B. Doggett, the President and
2394 CEO of Electric Reliability Council of Texas; and then the
2395 Hon. Mark Shurtleff, Attorney General of Utah; Mr. John
2396 Hanger, President and CEO of Hanger Consulting; and Ms. Sue
2397 Tierney, Managing Principal of the Analysis Group. So if you
2398 all would take a seat.

2399 Well, thank you all for joining us this morning, and we
2400 appreciate your patience. So I am going to call on each one
2401 of you to give an opening statement. You will have 5 minutes
2402 to do that, and Mr. Davis, we will recognize you first for
2403 your opening statement.

|
2404 ^STATEMENTS OF HON. JEFF DAVIS, COMMISSIONER, MISSOURI PUBLIC
2405 SERVICE COMMISSION; HON. STAN WISE, COMMISSIONER, GEORGIA
2406 PUBLIC SERVICE COMMISSION; HON. JON W. MCKINNEY,
2407 COMMISSIONER, WEST VIRGINIA PUBLIC SERVICE COMMISSION; HON.
2408 MARK SHURTLEFF, ATTORNEY GENERAL OF UTAH; H.B. DOGGETT,
2409 PRESIDENT AND CEO, ELECTRIC RELIABILITY COUNCIL OF TEXAS; SUE
2410 TIERNEY, MANAGING PRINCIPAL, ANALYSIS GROUP; AND JOHN HANGER,
2411 PRESIDENT AND CEO, HANGER CONSULTING, LLC

|
2412 ^STATEMENT OF JEFF DAVIS

2413 } Mr. {Davis.} Chairman Whitfield, Ranking Member Rush
2414 and members of the committee, thank you for allowing me this
2415 opportunity to testify here today. As a Missouri Public
2416 Service Commissioner, I am acutely aware of the potential
2417 impacts of EPA's pending regulations because it is my job to
2418 set the rates on customer bills, and I applaud this committee
2419 for reviewing the impacts those regulations are going to have
2420 on our citizens and on our Nation's economy.

2421 To summarize my testimony, I feel like my ratepayers are
2422 being attacked. Can we keep the lights on? Sure, we will do
2423 whatever it takes. That being said, it won't be easy.
2424 Nobody knew there was a problem in Arizona or southern

2425 California last week until 1.5 million Americans were left in
2426 the dark. Reliability is definitely going to be impacted
2427 because less generation equals less reliability.

2428 Also, replacing these old coal-fired units will cost
2429 more money. They will drive up rates because natural gas
2430 plants are still more expensive to operate than coal. Sure,
2431 we have got better than 20 percent reserve margins in both
2432 the Southwestern Power Pool and MISO footprint but the law of
2433 supply and demand says decreased supply increases price and
2434 the cumulative effect of these regulations will be to
2435 significantly reduce those reserve margins, the capacity,
2436 over the next decade by forcing the closure of many coal
2437 plants that are smaller than 300 megawatts as well as a
2438 significant number of those coal plants between 300 and 500
2439 megawatts of capacity.

2440 To put this in perspective, in Missouri, I have almost
2441 600,000 households, 1.5 million people approximately that
2442 make less \$25,000 per year. That is according to the U.S.
2443 Census statistical abstract. I depend on these old coal
2444 plants to generate electricity almost every day for more than
2445 2 million households. Why? Because they are still cheaper
2446 to operate and cheaper to dispatch than natural gas plants.
2447 Replacing them with renewables creates more of a reliability
2448 problem, and replacing them with gas will undoubtedly lead us

2449 back to the gas affordability crisis that we faced two or
2450 three times in the last decade.

2451 I submit to you that if you want the price of natural
2452 gas to go back up, all we have to do is have our utilities
2453 plan and build resources based on the premise that natural
2454 gas will be cheap and plentiful for the next 10, 20 or 30
2455 years, and that is where we are headed.

2456 From a transmission perspective, by forcing the closure
2457 of a coal plant or small clusters of coal plants, these
2458 regulations are going to create pockets on the grid that have
2459 an increased risk of reliability issues because the grid was
2460 designed and built on the premise that those plants are going
2461 to be there providing voltage support to satisfy local load
2462 requirements throughout the country. I haven't plotted out
2463 where these plants are on a map but I can assure you that the
2464 absence of these plants will change the flow of power on the
2465 grid and create reliability issues in some areas.

2466 Turning to the actual effect of the EPA regulations on
2467 my State, these costs are going to be a significant burden.
2468 We all like clean air but the people I have need jobs. For
2469 example, the scrubbers used to remove particulates and gases
2470 cost anywhere between \$250 million to \$300 million per unit.
2471 We just spent \$528.1 million to retrofit one coal plant to
2472 put scrubbers on. EPA has got more than a dozen regulations

2473 that are currently working their way through the pipeline.
2474 When you figure a 10 percent return on that investment, gross
2475 that number up for taxes and amortize the costs over 30
2476 years, it is ultimately going to cost my ratepayers
2477 approximately \$1 billion. If you assume that utility has 1.2
2478 million customers and divide the costs out on a per-customer
2479 basis, you are looking at close to \$1,000 per customer over
2480 the next 30 years. It is that cost to a residential consumer
2481 as well as the impact it will have on small business and
2482 industry that I am concerned about.

2483 In Missouri this year already, we have an estimated 26
2484 heat-related deaths this year. Eighteen are still pending a
2485 final determination. In some cases and in certainly past
2486 cases, there was evidence that those customers actually had
2487 functioning air conditioners, they just weren't using them
2488 because in all likelihood they were afraid they couldn't pay
2489 their bills.

2490 In all honesty and in conclusion, I am just not sure how
2491 much more of this help my ratepayers can afford.

2492 [The prepared statement of Mr. Davis follows:]

2493 ***** INSERT 6 *****

|

2494 Mr. {Whitfield.} Thank you, Mr. Davis.

2495 Mr. Wise, you are recognized for 5 minutes.

|
2496 ^STATEMENT OF STAN WISE

2497 } Mr. {Wise.} Thank you, Mr. Chairman. Thank you,
2498 Ranking Member Rush. My name is Stan Wise. I am a publicly
2499 elected commissioner of the Georgia Public Service Commission
2500 and I currently serve as its chairman.

2501 As a utility regulator, I am responsible for ensuring
2502 that retail electricity customers in Georgia receive
2503 reasonably priced and reliable electric service, and like the
2504 rest of the United States economy, the economy of Georgia has
2505 suffered and our unemployment rates are above the national
2506 average. I worry that the cost and the reliability impacts
2507 of the new environmental rules will only further slow our
2508 recovery and cost jobs.

2509 During most of the last 10 years, Georgia was growing
2510 and we added 1.5 million new residents. Electricity
2511 generation increased by 40 percent and job growth increased
2512 by 140,000. At the same time, Georgia has been active in
2513 addressing power plant emissions with significant reductions
2514 including mercury through the State rules with reasonable
2515 compliance schedules. The cost of these emission reductions
2516 are already borne by the citizens of the State of Georgia.
2517 Customers of Georgia Power see an environmental line item on

2518 their bills currently averaging over \$7 a month for household
2519 customers.

2520 My two principal concerns with this fleet of new
2521 regulations are this. First, I am concerned that there have
2522 been no comprehensive studies by the EPA to assess the impact
2523 of all of these rules on the price of electricity, on jobs,
2524 on the reliability of supply and the overall economy in our
2525 State. EPA only evaluates each rule in isolation, that is,
2526 the impact of one rule independent of all other regulatory
2527 actions. This is a very real issue for me because my
2528 Commission and Georgia utilities must consider the effect of
2529 all regulations in deciding how to comply cost-effectively
2530 while maintaining reliability. The EPA has not looked at
2531 these regulations in a comprehensive manner. Independent
2532 groups have examined the rules and they report double-digit
2533 increases in electricity rates over the next 10 years, job
2534 losses in the Southeastern in the hundreds of thousands, and
2535 single-digit reserve margins. To me, the EPA's approach in
2536 analyzing the impact of these rules appears to be
2537 shortsighted and simplistic. It just doesn't make sense.

2538 My second concern with these fleet of regulations is the
2539 impact on reliability. How do they affect reliability?
2540 First, our reserve margins mentioned above in several studies
2541 represents actual assets that are available to provide

2542 electricity if demand increases or a plant fails. Without
2543 sufficient reserve margin, there is a highly increased risk
2544 of outages and blackouts. The assessment of future reserve
2545 margin is a critical component of my Commission's examination
2546 of future power needs and decisions on generation. This is
2547 key. The rules don't provide sufficient time for an orderly,
2548 deliberate technology installation program as has been the
2549 case with past environmental rules, nor do they allow time
2550 for construction of replacement generation.

2551 The emphasis on this point is, we just don't know how
2552 much technology is required or the potential requirements.
2553 We don't have sufficient time to install controls, do not
2554 have time to build new generation. This is what causes me
2555 and my colleagues great concern on reliability. It is not a
2556 responsible approach to managing our energy supply.

2557 I have other issues discussed in my written testimony
2558 where utilities have been forced to guess at compliance
2559 strategies, and the EPA's failure to engage State agencies
2560 such as mine in the development of these new rules. I am
2561 concerned about both the power industry that I regulate and
2562 the Georgia customers that I am entrusted to protect. These
2563 environmental rules have large impacts and the EPA has not
2564 studied the cumulative impact of the rules aimed at air
2565 emissions, coal ash and water issues. This hearing is

2566 focused on reliability, and I am concerned that for my State
2567 where we have already proposed the retirement of 569
2568 megawatts of coal capacity and deferring action on another
2569 2,600 megawatts of coal capacity until these regulations are
2570 final. The impossibly short time frame for compliance is
2571 also a concern that affects electricity reliability, not to
2572 mention the downrange jobs and community impacts associated
2573 with power plant retirement.

2574 Congress could aid in making this situation manageable
2575 by insisting upon a comprehensive study, preferably by an
2576 agency other than the EPA, on the impacts of these rules and
2577 by providing more realistic time frames for compliance that
2578 would both increase reliability and reduce cost. Thank you,
2579 Mr. Chairman.

2580 [The prepared statement of Mr. Wise follows:]

2581 ***** INSERT 7 *****

|

2582 Mr. {Whitfield.} Thank you.

2583 Mr. McKinney, you are recognized for 5 minutes.

|
2584 ^STATEMENT OF JON W. MCKINNEY

2585 } Mr. {McKinney.} Thank you, Mr. Chairman and Ranking
2586 Member and members of the subcommittee, and thank you for the
2587 opportunity to appear before the committee.

2588 I am used to being on the other side of the bench
2589 listening to the many different perspectives. You asked for
2590 my perspective on the impact of a number of new EPA
2591 regulations affecting the power sector, so I would like to
2592 share with you what I know about these impacts and the
2593 environmental regulations that have already taken place in
2594 West Virginia and my overreaching concern that the pace of
2595 these additional requirements does not allow sufficient time
2596 to evaluate their potential impacts on reliability or for
2597 cost-effective implementation.

2598 I am an economic regulator, and it is my sworn duty to
2599 balance the interests of ratepayers, utility companies and
2600 the State. That is a tough assignment. We regularly hear
2601 many passionate pleas from industrial customers and
2602 residential customers who have to live on fixed incomes. We
2603 have heard these arguments recently from power companies as
2604 they installed new equipment to comply with existing
2605 environmental requirements. According to EPA's Acid Rain

2606 database, 1990 power plants in West Virginia emitted 970,000
2607 tons of SO₂. In 2010, the emissions were reduced to 110,000
2608 tons, an 89 percent reduction.

2609 To make these improvements, our electric industry has
2610 spent some \$4 billion on environmental controls and the costs
2611 had to be passed on to our ratepayers. Even though West
2612 Virginia has relatively low electric rates, those rates have
2613 increased by 40 percent in recent years. And although I am
2614 concerned about cost of compliance, I am equally concerned
2615 about reliability. The plants that have been equipped with
2616 modern controls are generally the largest and newest plants
2617 but there are many smaller plants in West Virginia, and those
2618 plants provide not only generation but make the grid more
2619 stable. As a result of the EPA's proposal, many of these
2620 plants are expected to retire. One utility has already
2621 announced three plants in West Virginia totaling over 1,800
2622 megawatts will retire by 2014.

2623 My concern with both reliability and ratepayer costs
2624 will be negatively impacted by the new EPA rules led me to
2625 introduce a resolution at the July NARUC meeting that
2626 promotes increased flexibility for implementation of EPA
2627 rulemakings. That resolution was passed and is now the
2628 official policy of the National Association of Regulatory
2629 Utility Commissioners. Briefly, the resolution recognizes

2630 that by providing great flexibility, closer coordination with
2631 State and federal partners, EPA programs can achieve the same
2632 environmental goals at a lower cost to customers and without
2633 compromising reliability. Flexibility in the schedule of
2634 implementation of EPA regulations can lessen rate increases
2635 because of improved planning, selection of correction design
2636 to address multiple requirements, greater use of energy
2637 efficiency and demand-side resources, and orderly decision-
2638 making. Recently, several regional reliability organizations
2639 submitted comments to EPA echoing these concerns. Their
2640 comments are attached to my written testimony.

2641 The impact of these rules goes far beyond the utility
2642 sector itself and could threaten the recovery of the broader
2643 economy. American Coalition of Clean Coal Electricity
2644 recently asked NERA to model economic impacts of the
2645 Transport and MACT Rule. Overall, the analysis shows that in
2646 2016 electric rates will increase by 11.5 percent in the
2647 United States and 12.9 percent in West Virginia. Moreover,
2648 net job losses are projected to be 1.44 million jobs in the
2649 total United States and 38,500 in West Virginia.

2650 Cost feasibility and reliability impacts of EPA
2651 regulations have not been thoroughly examined and
2652 consequences of implementing these requirements without
2653 adequate review could be irreparable. Greater flexibility

2654 could preserve both electric reliability and mitigate
2655 additional rate increases. With these challenges in mind, I
2656 urge you to consider legislation such as the TRAIN Act and to
2657 include pertinent portions of the NARUC resolution in the
2658 bill. Thank you.

2659 [The prepared statement of Mr. McKinney follows:]

2660 ***** INSERT 8 *****

|

2661 Mr. {Whitfield.} Thank you.

2662 Mr. Shurtleff, you are recognized for 5 minutes.

|
2663 ^STATEMENT OF MARK SHURTLEFF

2664 } Mr. {Shurtleff.} Thank you, Chairman Whitfield, Ranking
2665 Member Rush, members of the subcommittee. It is an honor to
2666 be here today with you, and my name is Mark Shurtleff. I am
2667 the Attorney General for the State of Utah. It is a pleasure
2668 to be with all these great experts on this panel. I want to
2669 just focus if I may my brief remarks on one rule that is
2670 imminent, and that is the Utility MACT which the EPA seems
2671 intent on proposing or adopting before November 16th.

2672 As I heard Commissioner Spitzer say in the prior panel,
2673 the best time for analysis is before a rule becomes final.
2674 Time is running out clearly on this rule. Eighteen Attorneys
2675 General including, Mr. Chairman, my friend, the Attorney
2676 General of Kentucky, Mr. Conway, have sent letters to the EPA
2677 Administrator asking that they withdraw the proposed MACT
2678 rule. As the chief legal officers of our States, we are most
2679 concerned with the rule of law. The EPA has clearly failed
2680 to assess the impact of that rule on a cumulative basis in
2681 light of its other promulgated, proposed and pending
2682 regulations governing electric power generation, and without
2683 the cumulative analysis, neither the EPA, FERC, Congress nor
2684 the public can truly understand the effect of all these

2685 regulations and the reliability of the electric grid and
2686 indeed on the economy, on jobs and electricity rates to
2687 consumers.

2688 The law requires cumulative analysis. Under Executive
2689 Order 13563 signed by President Obama in January of this
2690 year, federal agencies must assess the cumulative impact of
2691 their proposed regulations including costs and they must
2692 tailor them to impose the least burden on society. The EPA
2693 has failed to do so.

2694 A cumulative impact analysis is extremely important from
2695 a practical perspective. If it is adopted, the Utility MACT
2696 Rule will clearly not operate in isolation. Instead, there
2697 are a large number of related regulations that EPA has
2698 already adopted or has proposed for adoption and is currently
2699 considering. Yet Congressman Waxman and Chairman Wellinghoff
2700 had this interaction about whether FERC staff was reliable or
2701 unreliable and what they had to rely on in order to make
2702 their recommendations. The EPA should do this. They can do
2703 it. The private sector has done cumulative analysis and the
2704 results are very disturbing.

2705 As just mentioned by Commissioner McKinney, the American
2706 Coalition for Clean Coal Electricity, ACCE, commissioned the
2707 highly regarded National Economic Research Association to
2708 prepare a report, and they just looked at just two

2709 regulations, the Cross-State Air Pollution Rule, which
2710 Ranking Member Rush mentioned ought to be something studied,
2711 but they looked at that and the Utility MACT Rule and said it
2712 would be a serious blow to the economy, as mentioned, a net
2713 loss. Now, this takes into consideration--I think Mr. Inslee
2714 earlier in the prior panel mentioned jobs created. They said
2715 there would be 43,000 jobs created but 1.8 million lost, so
2716 the net loss would be 1.4 million jobs by 2020. The
2717 combination of those two regulations would also be a
2718 substantial increase in costs, in some places as much as 23
2719 percent increase in the cost of electricity prices, could be
2720 a total of \$184 billion in the next 20 years.

2721 So last week's cascading blackout in the southwestern
2722 United States clearly shows what we all know already, and
2723 that is, the grid is very interdependent, that these
2724 disruptions in one location can have far-reaching
2725 consequences. So the EPA should not proceed with the whole
2726 suite of regulations designed to restructure the utility
2727 industry without that careful and complete analysis as
2728 required by law.

2729 Now, the EPA is claiming that it has to move forward
2730 with these proposed utility MACT rules under a federal
2731 consent decree. Listen, I understand, we have been under
2732 federal consent decrees and we can't get out from under them.

2733 I get that. But they--and that consent decree says they have
2734 to do this by November 16th, 2 months away. However, you
2735 need to know that the EPA agreed to that deadline. They
2736 proposed that deadline. So I think it is wrong for a federal
2737 agency to avoid its legal responsibilities by hiding behind a
2738 deadline of its own creation, that consent decree, and you
2739 have to understand, the consent decree is not hard and fast,
2740 either. They clearly seek an extension for good cause shown.
2741 Clearly, this is a case of good cause for extending the
2742 deadline as required by law.

2743 Unfortunately, it seems like they are going to go
2744 forward. They will take action with this ill-advised
2745 regulation that is proposed, and so I would urge Congress to
2746 take whatever action it can. If EPA goes forward on November
2747 16th and adopts the utility MACT, whatever you can do, to
2748 enact legislation that would defer that rule and other major
2749 power sector regulations at least and until they fulfill
2750 their responsibility under the law to perform a cumulative
2751 impact analysis. You know, State officials, we protect not
2752 only interests of local jobs and the economy and electric
2753 reliability but what the law mandates, and we would ask you
2754 to hold the EPA to that requirement as well.

2755 Thank you, sir.

2756 [The prepared statement of Mr. Shurtleff follows:]

2757 ***** INSERT 9 *****

|

2758 Mr. {Whitfield.} Thank you.

2759 Mr. Doggett, you are recognized for 5 minutes.

|
2760 ^STATEMENT OF H.B. DOGGETT

2761 } Mr. {Doggett.} Good morning, Chairman Whitfield,
2762 Ranking Member Rush and members of the subcommittee. I am
2763 Trip Doggett, the CFO of the Electric Reliability Council of
2764 Texas. I have a brief footprint above you on the slip of the
2765 ERCOT territory. We are the independent system operator that
2766 manages the flow of electric power to around 23 million
2767 Texans representing about 85 percent of our electric load in
2768 the State and 75 percent of the land area. You have asked me
2769 to come before the subcommittee today to discuss our report
2770 on the impacts of the Cross-State Air Pollution Rule on the
2771 ERCOT system.

2772 I will start by saying that I am not here to take a
2773 position on the merits of the rule. I am here to express my
2774 reliability concerns with the implementation timeline of the
2775 rule. As Mr. Terry mentioned earlier, in the proposed Clean
2776 Air Transport Rule, Texas was only included in the peak
2777 season NOx program and in the final rule, which is now known
2778 as the Cross-State Air Pollution Rule, which I will refer to
2779 as CSAPR, Texas is included in the annual SO2 and annual NOx
2780 programs as well as the peak season NOx program, and in
2781 Texas, the annual SO2 limits appear to be the most

2782 restrictive.

2783 In July, our Public Utility Commission of Texas asked us
2784 to review the impacts of the final rule, and I will highlight
2785 the rules effective on January 1, 2012, so our analysis was
2786 focused on the near-term reliability implications. We
2787 consulted with the owners of our coal-fired generating
2788 resources to determine their plans for rule compliance. The
2789 individual resource owner compliance strategies were reviewed
2790 and aggregated to determine the implications for overall
2791 ERCOT system reliability. It is important to note that our
2792 analysis did not include a calculation of the cost for
2793 compliance for resource owners or the impact on electricity
2794 market prices.

2795 Based on the information provided by the resource
2796 owners, we developed three possible scenarios of impacts. In
2797 what I will refer to as kind of the best case, our first
2798 scenario models successful implementation of their compliance
2799 plans. In this scenario, the incremental capacity reductions
2800 due to CSAPR are expected to be approximately 3,000 megawatts
2801 in the off-peak months and approximately 1,200 to 1,400
2802 megawatts in the peak months. You heard earlier today that
2803 Luminant announced this week that they would shut down 1,200
2804 megawatts of their generation to comply with the rule, and
2805 that 1,200 megawatts was included in our analysis that

2806 reflects 1,200 to 1,400 in the peak months. What happens is,
2807 capacity reductions in the off-peak months are expected to
2808 occur so that they can save their allowances until the peak
2809 months. We have a healthy reserve margin within Texas.
2810 However, I will highlight that with our reserve margin of
2811 over 17 percent, during this past month of August, if ERCOT
2812 had experienced the incremental reductions in available
2813 generation that we expect to occur from CSAPR, customers in
2814 our region would have experienced rotating outages during the
2815 month of August.

2816 We also examined two other risks in scenario two. We
2817 recognized daily dispatching of units that were designed for
2818 baseline would increase potentially that impact to 5,000
2819 megawatts in off-peak, scenario three, up to 6,000 in the
2820 off-peak months. Scenario three is related to the
2821 availability of low-sulfur coal.

2822 I will summarize by saying when the final CSAPR rule was
2823 announced in July, it included Texas in some compliance
2824 programs that ERCOT and our resource owners had reasonably
2825 believed would not apply to Texas. In addition, the
2826 implementation timeline by January 2012 does not provide
2827 ERCOT or our resource owners enough time to analyze the
2828 impacts. If the implementation deadline for CSAPR were
2829 significantly delayed, it would expand our options for

2830 maintaining system reliability. I think you have heard
2831 consistently from the FERC commissioners that this is not a
2832 one-size-fits-all issue of reliability and certainly within
2833 Texas we do have reliability issues with the implementation
2834 timeline.

2835 Thank you for inviting me.

2836 [The prepared statement of Mr. Doggett follows:]

2837 ***** INSERT 10 *****

|

2838 Mr. {Whitfield.} Thank you.

2839 Ms. Tierney, you are recognized for 5 minutes.

|
2840 ^STATEMENT OF SUE TIERNEY

2841 } Ms. {Tierney.} Good afternoon, Mr. Chairman, Ranking
2842 Member Rush and members of the subcommittee. I very much
2843 appreciate the invitation to testify today on this issue.

2844 I want to focus my testimony on issues relating to the
2845 recent air regulations being proposed by the EPA for two
2846 reasons, and that is principally because those are the
2847 regulations with the most immediate impact on the power
2848 sector. I want to focus on two questions: can the Nation
2849 get the benefits of both public health and reliable electric
2850 supply, and will there be jobs and positive economic activity
2851 that flow from the issuance of these rules and their
2852 implementation by the industry.

2853 I believe the answer to both of those questions is yes
2854 and that the rules can proceed to implementation without a
2855 concern that in the end there will be reliability issues, and
2856 I am going to give you several reasons why. These are facts
2857 and conditions in the marketplace that give me confidence
2858 that we are in a manageable situation with regard to these
2859 rules.

2860 Number one, the electric industry has a very proven
2861 track record of addressing reliable power supplies and doing

2862 what it takes at the end of the day to make sure that the
2863 lights stay on. These are a group of people with a very
2864 strong mission orientation. Every person on my right fits
2865 that category as do all of the people in this industry, and
2866 they have ensured that we have reliable electricity supply as
2867 a priority.

2868 Number two, the new air rules are not a surprise. These
2869 are not coming at us in the last few months. These have been
2870 underway for over a decade of notice and they allow for more
2871 technology options and approaches than originally expected in
2872 prior versions of these rules. EPA's rules are technically
2873 and economically feasible.

2874 Number three, the owners of a portion, a substantial
2875 portion of affected plants, have already taken steps to
2876 modernize their facilities so that the companies are ready to
2877 comply with the new air regulations. As we heard previously
2878 today, many States have already had mercury rules that are
2879 tighter than what EPA is proposing. Many companies with
2880 facilities affected are under court order to address the
2881 issues that are coming forward. In fact, some of the recent
2882 announcements we have heard in the industry are coming from
2883 violations of current rules and not future rules of the EPA.
2884 And finally, we see that the CEOs owning a substantial
2885 portion of the power plants affected by these rules have

2886 indicated to securities analysts under the Sarbanes-Oxley
2887 requirements that they are ready to comply with these
2888 regulations.

2889 Number four, current fuel market conditions are already
2890 putting economic pressure on the least efficient coal plants.
2891 Since 2006, coal prices have gone up 30 percent. Natural gas
2892 prices have gone down by a third. These older plants are not
2893 operating very much. The relatively attractive outlook for
2894 natural gas prices which results from the abundant supply of
2895 gas including unconventional gas will enable the Nation to
2896 support modernization of the grid in affordable ways. Even
2897 so, every analyst that we have seen coming out with estimates
2898 of coal plant retirements and future electricity supply
2899 indicates that over 50 percent of our electricity supply will
2900 eventually come from coal even with these changes underway.

2901 Number five, there are many studies, you have heard
2902 about them today, about the amount of capacity that will
2903 retire. The more reasonable estimates are the ones that have
2904 been prepared recently. These are reflective of the actual
2905 rules that are being proposed. The most recent one is the
2906 Bipartisan Policy Center's, and that indicates 15 to 18
2907 gigawatts across the country.

2908 Number six, and this is really the most important
2909 reason, at the end of the day, you can rely on the industry

2910 and its tools to make sure that the lights stay on. We have
2911 heard today about system planning. We have heard about
2912 least-cost planning from transmission companies and utility
2913 companies under the supervision of regulators. There are
2914 wholesale power markets where there is underutilized
2915 capacity. We have State and federal and grid operators who
2916 have an extremely strong record of taking action when
2917 necessary to make sure that they meet the obligation to
2918 provide reliable supply. Perhaps the most important one is
2919 at the end of the day, Congress has already given to the EPA,
2920 the U.S. Department of Energy and the Federal Energy
2921 Regulatory Commission tools that enable emergency conditions
2922 to allow for plants to keep open. The most recent example of
2923 this is across the river, the generating station in Potomac
2924 was required to stay on under an emergency order from the
2925 Department of Energy to keep the lights on for the District
2926 of Columbia.

2927 My time is up, and I am happy to answer any other
2928 questions.

2929 [The prepared statement of Ms. Tierney follows:]

2930 ***** INSERT 11 *****

- |
- 2931 Mr. {Whitfield.} Thank you, Dr. Tierney.
- 2932 Mr. Hanger, you are recognized for 5 minutes.

|
2933 ^STATEMENT OF JOHN HANGER

2934 } Mr. {Hanger.} Thank you, Mr. Chairman, Ranking Member
2935 Rush and members of the subcommittee. Again, good afternoon.
2936 And I have had the privilege to serve Pennsylvania as both a
2937 public utility commissioner and more recently as the
2938 Secretary of Environmental Protection. The Department of
2939 Environmental Protection in Pennsylvania also regulates the
2940 oil and gas industry and is responsible for the production
2941 numbers that are really rather extraordinary.

2942 The recent discoveries of natural gas from shale
2943 formations in Pennsylvania and other States will allow us to
2944 tap into a domestic cleaner fuel that can power America into
2945 the future. I am proud to have played a role in making
2946 Pennsylvania a major producer of natural gas and ensuring
2947 strong rules for its production. I think that the promise of
2948 this abundant fuel provides an important backdrop to our
2949 discussions today and in particular the concern about
2950 replacement power generation.

2951 From 2000 to 2008, just in Pennsylvania, 8,000 megawatts
2952 of new gas capacity was built. Pennsylvania is located in
2953 the middle of the region known as PJM, which spans 13 States
2954 and provides electric service to over 58 million people.

2955 This past May, PJM conducted electric generation auction for
2956 the 2014-2015 delivery year, which is the first time period
2957 in which both the Cross-State Air Pollution Rule and the
2958 Mercury and Air Toxics Rule will be in effect. The results
2959 of the auction speak for themselves. As a result of the
2960 auction, PJM knows that it will have sufficient resources to
2961 meet demand during the delivery year and also that it will
2962 have a reserve margin of 19.6 percent, which is in excess of
2963 the target 15.3 percent installed reserve margin for the
2964 region.

2965 Some regulators and companies from other States say the
2966 grid cannot manage the retirement of a significant amount of
2967 coal generation but I am here to tell you that it can be
2968 managed. In Pennsylvania, we have already faced the
2969 retirement of some of our coal-fired power plants, and it was
2970 done in a responsible, orderly fashion, and the lights stayed
2971 on. Back in December 2009, one of our generator operators,
2972 Exelon, decided to retire four coal- and oil-fired units with
2973 a combined capacity of 933 megawatts at two stations in
2974 southeastern Pennsylvania. When they were built, they were
2975 state of the art, but they were built during the Eisenhower
2976 Administration. They do not produce energy as efficiently as
2977 newer technologies and therefore waste energy while they emit
2978 dangerous pollutants that sicken and indeed kill people. The

2979 EPA was also enforcing rules concerning thermal discharges
2980 from these plants.

2981 When Exelon notified PJM of its intention to retire the
2982 units by May 2011, PJM said transmission upgrades would first
2983 be required to protect reliability. As a result, the EPA,
2984 PJM and Exelon worked together to execute a consent order
2985 that had two units retire on the original schedule while two
2986 others were allowed to run for reliability reasons only for
2987 up to another 7 and 12 months, respectively. The Cromby
2988 Eddystone example represents a workable model for EPA to
2989 follow in resolving similar situations in other States that
2990 may arise as it implements its air quality regulations in the
2991 coming years. Indeed, five RTOs have informed EPA that they
2992 are willing to assist EPA in identifying where certain plants
2993 needed for reliability should be eligible for an extension of
2994 time to achieve compliance. These five RTOs have proposed a
2995 safety valve or reliability safeguard, and I have attached
2996 those comments to my testimony. The RTOs also asserted that
2997 they anticipate the reliability safeguard, and this is their
2998 language, ``would not need to be invoked often, if at all.''

2999 In conclusion, I would like to end with a quote from an
3000 August 26, 2011, PJM report. The report says, ``Newer, more
3001 efficient generation resources that replace retiring
3002 generation may have lower forced outage rates and thus are

3003 more dependable than older generation resources that may be
3004 nearing the end of their useful lives. Additionally, new
3005 entry generation demand response and energy efficiency
3006 resources may also provide lower-cost alternatives to achieve
3007 resource adequacy and local reliability.''

3008 Mr. Chairman, across this country, we have some very
3009 good news. There is a lot of new generation being built. We
3010 focus a lot on retirement of old plants that are inefficient
3011 and highly polluting but there are tens of thousands of
3012 megawatts of new generation under construction and many more
3013 in the planning phase. It is time to get on with this and
3014 protect the people's health of this country as well as
3015 ensuring that the lights stay on. Thank you, Mr. Chairman.

3016 [The prepared statement of Mr. Hanger follows:]

3017 ***** INSERT 12 *****

|
3018 Mr. {Whitfield.} Thank you, and thank you all for your
3019 testimony.

3020 Mr. Wellinghoff in his testimony made it very clear that
3021 while FERC had responsibility for reliability, the planning
3022 and the detailed analysis of impacts of regulations really
3023 occurred at the planning levels and at the State level, the
3024 public utility commission levels and so forth. And so we
3025 have representatives here today from Georgia, Missouri, West
3026 Virginia, Utah and Texas, and every one of you has said that
3027 you are concerned about the reliability, you believe there is
3028 going to be an increase in cost, and my view, reliability is
3029 also an issue when people cannot afford to pay for
3030 electricity because they in effect are not receiving
3031 electricity, and I think, Mr. Davis, you touched on that
3032 yourself because you said there were certain number of deaths
3033 in Missouri during the heat spell, and one of the reasons
3034 was, people could not afford the additional cost of
3035 electricity. Is that correct?

3036 Mr. {Davis.} Yes, it is. Certainly everything points
3037 to the fact that they had air conditioning and that they made
3038 a conscious decision not to use their air conditioning.

3039 Mr. {Whitfield.} You know, so Mr. Wellinghoff, while I
3040 am not going to say he is not concerned about reliability

3041 because I am sure he is, but he didn't leave us with the
3042 impression that this, I am going to call it Air Transport
3043 Rule and Utility MACT, he did not leave us with the
3044 impression that he thought it would have a dramatic impact on
3045 reliability, but from your testimony, you five, who have
3046 responsibility for this, am I correct in that you have great
3047 concerns about reliability? Mr. Davis, do you have concerns
3048 about reliability as a result of these regulations?

3049 Mr. {Davis.} Absolutely, in certain areas.

3050 Mr. {Whitfield.} Mr. Wise?

3051 Mr. {Wise.} Mr. Chairman, in our State, we have an
3052 integrated resource plan that we do every 3 years, do a 20-
3053 year look. We have always been right. That doesn't mean
3054 that we couldn't be wrong, but we are concerned about it
3055 because of reliability. We heard comments about being able
3056 to fire up gas-fired generation. We don't have underutilized
3057 gas generation in our State and it does take time to design,
3058 build and construct new gas-fired generation. So nothing
3059 happens in a vacuum.

3060 Mr. {Whitfield.} Right.

3061 Mr. {Wise.} So, yes, sir, it is a concern.

3062 Mr. {Whitfield.} Mr. McKinney?

3063 Mr. {McKinney.} Yes, it definitely is a concern. I
3064 talked about overreaching concern about compliance deadlines,

3065 and that is really--we just don't have time to make the
3066 changes necessary.

3067 Mr. {Whitfield.} Mr. Shurtleff?

3068 Mr. {Shurtleff.} Yes, Mr. Chairman, and what is amazing
3069 is that while, as I mentioned, federal law requires the EPA
3070 to do this, they have all these tools and all these experts
3071 so it really becomes even a federalism issue as far as I am
3072 concerned in that they are not--it is not like they are being
3073 told to do it alone, they have help, but they are not taking
3074 advantage of that, and they could.

3075 Mr. {Whitfield.} Right. And Mr. Doggett, I think you
3076 said that you could expect blackouts as a result of this. Is
3077 that correct?

3078 Mr. {Doggett.} Yes, sir. We are one of the central
3079 planners that the chairman was referring to, and I have
3080 concern with this implementation timeline that there will be
3081 problems in the near term.

3082 Mr. {Whitfield.} Now, comments were made that EPA is
3083 reaching out to States and planning groups to discuss the
3084 impact of these regulations. Did EPA reach out to you, Mr.
3085 Davis, and talk about these issues?

3086 Mr. {Davis.} No, sir.

3087 Mr. {Whitfield.} Mr. Wise?

3088 Mr. {Wise.} No, sir.

3089 Mr. {Whitfield.} Mr. McKinney?

3090 Mr. {McKinney.} No, sir.

3091 Mr. {Whitfield.} Mr. Shurtleff?

3092 Mr. {Shurtleff.} I checked with our agency, and they
3093 said no, they have not.

3094 Mr. {Whitfield.} Mr. Doggett?

3095 Mr. {Doggett.} Yesterday afternoon.

3096 Mr. {Whitfield.} Yesterday afternoon? Before the
3097 hearing, right?

3098 Now, Mr. Inslee, who is a conscientious, very effective
3099 legislator, in his comments earlier today talked about all
3100 the job gains that we were going to have because of all this
3101 new technology. Now, Mr. McKinney, you and Mr. Shurtleff
3102 referred to an analysis conducted of the anticipated job
3103 gains or losses as a result of the Air Transport Rule and
3104 Utility MACT, and I believe that you said the net loss--that
3105 is including gains and losses--the net loss would be
3106 something like 1.4 million jobs. Is that right?

3107 Mr. {McKinney.} That is correct.

3108 Mr. {Whitfield.} Is that what you said also, Mr.
3109 Shurtleff?

3110 Mr. {Shurtleff.} Yes, Mr. Chairman. I have the chart
3111 before me, a negative 1.88 million, a positive 450,000, so
3112 negative 1.4 million.

3113 Mr. {Whitfield.} So, you know, people make comments
3114 that we are going to have all these jobs because of new green
3115 energy. Yes, there is going to be new jobs but there is
3116 going to be lost jobs as well, and particularly in the area--
3117 it depends on what area of the country you are living in.
3118 And then we have a case like Solyndra where they received a
3119 \$538 million loan guarantee, they were going to create 1,500
3120 jobs. They got that loan guarantee from the federal
3121 government relating to solar panels and now they are in
3122 bankruptcy, and the taxpayers are out \$538 million.

3123 Well, my time is expired, but Mr. Rush, I will recognize
3124 you for 5 minutes.

3125 Mr. {Rush.} Thank you, Mr. Chairman.

3126 I want to ask Dr. Tierney, first of all, just a quick
3127 question on the unfortunate death of the individual in
3128 Georgia. Would you say that that is a problem of reliability
3129 or inability to pay rates, and would the LIHEAP program have
3130 had an effect, a positive effect on that?

3131 Ms. {Tierney.} Based on my experience not only as a
3132 public utility commissioner, a head of an energy office in a
3133 State, a former secretary of the environment in a State and
3134 the assistant secretary for policy at DOE, I have experience
3135 in the LIHEAP program, and while I don't know the particulars
3136 at all about this person's unfortunate--or several people, I

3137 am not sure, in Missouri, I do know that the LIHEAP program
3138 is designed especially to deal with low-income issues
3139 relating to winter and summer, cooling and heating.

3140 Mr. {Rush.} I might add that some of my friends on the
3141 other side have been in opposition to LIHEAP and want to
3142 really kill the LIHEAP program off.

3143 But let me move to another area. You have been
3144 extraordinary in your conversation relating to job creation,
3145 and in your testimony you indicated two reports, and I just
3146 want to give you some time to expound on this whole--your
3147 item eight on your summary about job creation. What was the
3148 overall impact on jobs and investment and technologies from
3149 your perspective? Just give us a real thorough evaluation
3150 and assessment of job creation.

3151 Ms. {Tierney.} I am happy to do that, and I want to
3152 start by talking realistically about the fact that when
3153 people are talking about spending money on hardware for
3154 pollution control equipment and spending money on building
3155 new power plants to replace very old ones, we are talking
3156 about infrastructure jobs. We are talking about
3157 construction, we are talking about equipment manufacturing.
3158 This is heavy industry activity. These are job-creating
3159 activities, not to mention issues surrounding green energy
3160 jobs. I am not talking about those. What I am talking about

3161 is the job creation associated with replacing the kind of
3162 capacity that the estimates have said. Now, one of the
3163 estimates that I described in terms of my report, I provide
3164 information in detail of two studies, one by the Perry Group
3165 at the University of Massachusetts that looked at the
3166 national estimates as well as one by Professor Charlie
3167 Giachetti, and both of these indicate billions and billions
3168 of dollars of new investment that goes into jobs in heavy
3169 industry and in energy efficiency. As Representative Inslee
3170 said, energy efficiency is workers in communities putting on
3171 insulation in people's homes. Those are local jobs. And one
3172 of the things that we observed in the energy area is that the
3173 parts of the country that are very dependent on coal, 98
3174 percent dependent on coal, 90 percent dependent on coal, have
3175 had not as much opportunity, let us say, to go after energy
3176 efficiency actions in insulating homes of consumers, and the
3177 jobs that can be created in those communities associated with
3178 putting in energy efficiency and buttoning up the buildings
3179 so that people's bills go down, their electricity bills go
3180 down, is a real opportunity here.

3181 Mr. {Rush.} In August of 2010, you co-authored a report
3182 on the electric system reimbursement in the face of impending
3183 EPA air pollution rules. You recently updated that report.
3184 Can you summarize your new findings?

3185 Ms. {Tierney.} Yes. The most important findings were
3186 that there are so many companies that have indicated out loud
3187 that they are ready to manage these. We updated it also to
3188 indicate that the regulations as proposed are more flexible.
3189 They allow for more available pollution control technology
3190 than people previously thought, and that led us to conclude
3191 that the more recent estimates about the impacts of these
3192 regulations are the ones that are more credible for
3193 understanding where we stand today.

3194 Mr. {Whitfield.} At this time I recognize Mr. Olson
3195 from Texas for 5 minutes.

3196 Mr. {Olson.} I thank the chair and I thank the
3197 witnesses for coming today. I greatly appreciate your time
3198 and expertise.

3199 I am from Texas, so I am going to focus on some of the
3200 challenges that we are facing in Texas, and my first question
3201 is going to be for you, Chairman Doggett. Thank you for
3202 leaving the Lone Star State and coming to Washington, D.C. I
3203 know people back home say you are crazy. They say that about
3204 me all the time, but we are fighting for Texas.

3205 I want to talk about the Luminant issue, and we have
3206 talked about it in the previous panel and we have talked
3207 about it here, but because of the CSAPR rules, we are going
3208 to lose at least two coal-fired plants in our State, 500

3209 jobs, and I just want to make the panel aware and the
3210 committee aware of a letter that was sent from EPA. This is
3211 Deputy Administrator Bob, and I am going to mess up his last
3212 name, Perciasepe. He sent this to Luminant CEO David
3213 Campbell on September 11, 2011, just last Sunday, and the
3214 letter says, ``We will share with you data that illustrates
3215 how Texas Luminant can comply with CSAPR cost-effectively
3216 while keeping levels of lignite coal use near current levels,
3217 thus avoiding the need to idle plants or shut down mines in
3218 response to requirements of the rule.'' And Luminant's
3219 response is: ``We are very eager to receive this
3220 information. EPA has not yet laid out any specific
3221 alternatives that do not involve job losses and facility
3222 closures.'' I mean, shouldn't they have had that discussion
3223 with Luminant before CSAPR was being implemented? Mr.
3224 Doggett, do you care to respond?

3225 Mr. {Doggett.} I would prefer not to respond relative
3226 to job loss but certainly for reliability purposes, I think
3227 in discussions with EPA yesterday afternoon, they at this
3228 point are willing to sit and look at our numbers that
3229 generated the results from our report and let us try to
3230 determine why there are differences in the data that they
3231 used in preparing the rule versus the data that we are
3232 presenting so certainly that dialog would have been helpful.

3233 Mr. {Olson.} You would hope they have would that dialog
3234 beforehand, before the company announces that they are going
3235 to have to close two power plants. I mean, that is
3236 absolutely wrong.

3237 Again, to the public utility commissioners, same
3238 experience? Mr. Davis? Did the EPA not give you any
3239 warning, not consulting you or making promises it is not
3240 keeping.

3241 Mr. {Davis.} To my knowledge, to the best of my
3242 knowledge, our agency has not received any communications
3243 from the Environmental Protection Agency at all.

3244 Mr. {Olson.} Commissioner Wise?

3245 Mr. {Wise.} Yes, we have not, and we are just trying to
3246 figure out what the end rules are going to be and how we
3247 shoot at a target that we don't know where it is.

3248 Mr. {Olson.} And Commissioner McKinney?

3249 Mr. {McKinney.} To be fair to EPA, there has been
3250 several, from a NARUC perspective, several webinars and
3251 several discussions, but as far as reaching out individually
3252 and trying to understand what the local issues might be and
3253 what the real impact is going to be on both reliability and
3254 customers, no.

3255 Mr. {Olson.} And Attorney General Shurtleff?

3256 Mr. {Shurtleff.} My discussions with my clients over at

3257 PUC say they have not had that discussion, although I will
3258 point out that Utah has some of the cleanest coal in the
3259 world with very little mercury, and we would be able to share
3260 with all these folks if President Clinton in 2000 hadn't
3261 locked up the Kaiparowits Plateau designation, so we do have
3262 clean coal. It is not as big of an impact for us. We are
3263 concerned about the nationwide impact.

3264 Mr. {Olson.} And so just the committee members know and
3265 the American public knows how this decision came about, I
3266 mean, and this is in response to that EPA letter, but they
3267 based their inclusion of Texas in the final rule on a
3268 prediction of a very small contribution from Texas generation
3269 to a single air quality monitor, only one, in an Illinois
3270 town 500 miles away from Texas. In this location, the EPA
3271 established itself that has concluded that it is in air
3272 quality attainment based on actual monitored results, but
3273 because of EPA, they concede that whatever downwind Texas
3274 might cause, it is small and barely meets the statutory
3275 threshold and yet they have taken this action that is at
3276 least right now going to close two coal-fired power plants.

3277 Dr. Tierney, I want to ask you a question. I greatly
3278 appreciate your comments about natural gas and how that is
3279 the future of our energy generation in a lot of ways, but I
3280 am concerned about EPA because right now they are attacking

3281 some of the modern techniques we are using to recover natural
3282 gas, and we have got a great example in our home State of
3283 Texas where the EPA took over two wells in the Barnett Shale
3284 Play and took them from the railroad commission and the
3285 operator based on some sort of alleged contamination of
3286 drinking water. We did the tests and determined positively
3287 that there was no contamination from any sort of natural gas
3288 recovery operations near those wells.

3289 If the EPA is able to somehow curtail these techniques,
3290 does your model fall apart? Don't we have to have some other
3291 source of energy other than natural gas? We have to go back
3292 to coal because the wind and the solar, they are not baseline
3293 power loads. We have to have some alternative.

3294 Ms. {Tierney.} As you know very well, I am sure, most
3295 of the regulation that affects the extraction of natural gas
3296 is under State jurisdiction and State law, and so the terms
3297 and conditions under which extraction occurs in Texas is
3298 under the Railroad Commission. There are environmental
3299 issues. I have not heard anything in the past year and a
3300 half that I have been working on the National Petroleum
3301 Council study in the last 6 months in which I have been
3302 working on the Department of Energy shale gas committee in
3303 which I have heard EPA is going to shut things down on shale
3304 gas extraction.

3305 Mr. {Olson.} I will get you some information on the two
3306 wells they took over in the Barnett Shale Play. EPA took it
3307 over.

3308 I yield back the balance of my time. Thank you.

3309 Mr. {Whitfield.} At this time I recognize the gentleman
3310 from Pennsylvania, Mr. Doyle, for 5 minutes.

3311 Mr. {Doyle.} Thank you, Mr. Chairman, and I just want
3312 to say, I was listening to your remarks and I am sympathetic
3313 to the concern about jobs. I think a lot of us feel the same
3314 way about some of these trade agreements. I know many
3315 Republicans support trade agreements, and where I am come
3316 from, NAFTA didn't feel very good in terms of whether it was
3317 jobs for Pittsburghers but apparently it created jobs in
3318 other parts of the country, and it just seems this is the
3319 same kind of issue where there is obviously going to be
3320 displacement in certain parts of the country and
3321 opportunities in others. So I am sensitive to that.

3322 With regards to your comment about Solyndra, we had
3323 administrations in Pennsylvania too that did loan guarantees
3324 for an auto company and a television manufacturer that both
3325 went belly up and left our State too, but I think we can all
3326 agree that we still want to encourage these types of
3327 opportunities. They don't always pan out and everyone isn't
3328 a winner, but I don't think we should stop trying to bring

3329 opportunity and jobs to all parts of the country. I think
3330 that is what we all want to do here in the committee.

3331 I want to thank both panels. I am sorry I missed all
3332 the fun earlier. I had another meeting and I couldn't get
3333 here for the first panel.

3334 Mr. {Whitfield.} It was a little boring.

3335 Mr. {Doyle.} Yes, that is what I understand.

3336 But I am especially pleased to see John Hanger here. I
3337 want to tell you, Pennsylvania has benefited from his many
3338 years both as a public utility commissioner and secretary of
3339 our DEP, and we are fortunate to have someone like John here
3340 to share his expertise with us.

3341 I was listening a little bit to the earlier panel, and I
3342 was rather surprised to see that on the broader issue of
3343 reliability, there seemed to be nearly unanimous agreement,
3344 which is a rare thing on this committee, that when these EPA
3345 regulations go into effect, that the lights are going to stay
3346 on. I have been reading some of the comments filed by the
3347 RTOs that point out while reliability at large doesn't seem
3348 to be a major concern, there is some potential for more
3349 localized reliability issues that are going to need to be
3350 addressed in a targeted manner.

3351 Mr. Hanger, I would like to ask you, I was looking at
3352 PJM's comments to the EPA, and they said specifically PJM

3353 proposes that EPA include in its final rule a reliability
3354 safety valve for specific units deemed reliability-critical
3355 units where an individual unit shutdown would adversely
3356 impact local reliability. In your testimony, you seemed to
3357 suggest that this may not be needed and you cite your
3358 experience with the consent decree with Exelon. Do you
3359 believe that similar outcomes, consent decrees, would be
3360 expected across the country when needed, or could you expand
3361 a little bit on why maybe you think this reliability safety
3362 valve isn't necessary?

3363 Mr. {Hanger.} Well, I agree that the safety valve idea
3364 is a good idea. My testimony embraces the point that we
3365 already have that kind of authority under current law. We
3366 have at least four provisions in the Clean Air Act and the
3367 Federal Power Act that allow environmental regulators working
3368 with planning authorities like PJM and State public utility
3369 commissions, if that is appropriate, to enter into consent
3370 decrees, and so I absolutely agree that whenever you retire
3371 an individual plant, there is a local reliability analysis
3372 that must happen. That is true whether or not we have these
3373 rules. There are some plants that are retiring today and we
3374 don't have the rules, and I am sure wherever that happened or
3375 is in the process of happening, they have gone through a
3376 detailed reliability analysis. And we did that at Eddystone

3377 Cromby and we found--well, PJM found a problem and they then
3378 brought it to me and we worked out with the existing
3379 authority a consent order that ensured that the environment
3380 was protected and the lights stayed on.

3381 Mr. {Doyle.} Very good. So you don't necessarily
3382 oppose this idea of a reliability safety valve?

3383 Mr. {Hanger.} No, I don't oppose the idea.

3384 Mr. {Doyle.} Thank you, John.

3385 Mr. McKinney, PJM oversees a portion of the grid that
3386 serves 58 million in 13 States including your State and my
3387 State. It has a forward capacity market that allows it to
3388 know that it has capacity that it is going to need for the
3389 future, and recently PJM conducted its auction for the 2014-
3390 2015 period. The cross-state and mercury air toxic rules
3391 will both be in effect by then. This auction showed that PJM
3392 will have more than enough capacity to maintain reliability.
3393 More than 4 gigawatts of new capacity will come to the
3394 market, mostly demand response, and the reserve margin will
3395 be 19.6 percent, which is in excess of the target of 15.3
3396 percent. So based on this auction and additional analysis,
3397 PJM stated in its August 2011 report that resource adequacy
3398 does not appear to be threatened. West Virginia is in the
3399 PJM footprint, and I am just curious, does your Commission
3400 have any modeling or analysis that disputes PJM's finding or

3401 auction results?

3402 Mr. {McKinney.} What we do have is, I think if you
3403 listened earlier to the FERC commissioners, they talked about
3404 local impacts, and local impacts is really many of the
3405 issues, and we can reach back just to D.C. recently who chose
3406 to shut down two coal plants and have waited a significant
3407 number of years to be able to replace those with some other
3408 source of generation or some source of transmission. So the
3409 issue really gets down to local issues. Yes, there may be--
3410 if you have got 10 gigawatts someplace but you can't it to
3411 where it needs to be, it doesn't help.

3412 Mr. {Doyle.} Sure. I think we all realize that there
3413 is going to be local reliability issues in certain segments.

3414 Mr. {McKinney.} And that is what I am asking for. I am
3415 asking for some sort of flexibility, an ability to be able to
3416 move things and allow plants that don't need or you can't
3417 justify from an economic point of view to be retrofitted but
3418 allow them some safe harbor.

3419 Mr. {Doyle.} But you support this concept of
3420 reliability safety valve also?

3421 Mr. {McKinney.} Yes, I do.

3422 Mr. {Doyle.} Mr. Chairman, you are generous with your
3423 time as always, and I thank you.

3424 Mr. {Whitfield.} Thank you.

3425 Mr. McKinley, you are recognized for 5 minutes.

3426 Mr. {McKinley.} Thank you, Mr. Chairman.

3427 Mr. Hanger, you had referenced, I think you said in your
3428 remarks, I read through your printed remarks but in your oral
3429 statement you said that there were two plants or a couple
3430 plants that shut down in Pennsylvania. Am I correct on that,
3431 something about some plants in Pennsylvania?

3432 Mr. {Hanger.} Yes, there were two plants, four units, a
3433 total of 930 gigawatts.

3434 Mr. {McKinley.} And did they meet at one time the EPA
3435 standards?

3436 Mr. {Hanger.} They were built--

3437 Mr. {McKinley.} Yes or no.

3438 Mr. {Hanger.} At one time in the 1950s and 1960s and
3439 1970s but they were very old plants.

3440 Mr. {McKinley.} Okay. Old plants. I understand. But
3441 then you went on, which really caught my ear, you said that
3442 they sickened and killed people. Do you have a list of the
3443 people they killed?

3444 Mr. {Hanger.} I can't identify individuals but I--

3445 Mr. {McKinley.} But you said they killed people.

3446 Mr. {Hanger.} We can provide you--

3447 Mr. {McKinley.} That is said around here an awful lot.
3448 Everything is pretty loose about these remarks, about it

3449 causes asthma, it kills people, but no one gives us names of
3450 the people. I don't see the trial lawyers lining up at the
3451 doors to chase these people like ambulances. If they really
3452 have killed people, I would think someone would have pursued
3453 that, don't you think?

3454 Mr. {Hanger.} They do kill people, and unfortunately,
3455 we don't actually know their names. They kill, EPA data
3456 shows, up to 34,000 a year.

3457 Mr. {McKinley.} Thank you very much. You are just like
3458 so many other people here.

3459 Mr. McKinney, you have heard a lot of the testimony
3460 here, particularly from Dr. Tierney. I know often some of
3461 the other panelists would like to respond to some of the
3462 comments that have been made, so would you like to respond to
3463 Ms. Tierney's comments, her facts and conditions?

3464 Mr. {McKinney.} And respectfully, I do disagree with
3465 Dr. Tierney, and in fact, I have looked at the eight points
3466 and I can agree on one point and partially agree on another,
3467 but the rest I disagree, so that is two out of eight that I
3468 agree on, and I will go on a little background. One of the
3469 things we talked about, EPA has had years or decades of
3470 notice. Well, these rules are still not totally finalized,
3471 and until you see the final rule, there is no way you can
3472 make any judgment about what the impacts are going to be, and

3473 the second thing is that a substantial portion of affected
3474 plants have already taken steps to modernize. That is just
3475 not true. There are many plants out there. There are some
3476 plants that we have spent \$4 billion in West Virginia, and
3477 none of those plants meets the new rules. I mean, we have
3478 spent money after money trying to make adjustments in SO₂,
3479 trying to lower and do the right thing. Those obviously have
3480 been just not enough.

3481 One of the things I really disagree with is the fact--
3482 and I ran--from my former life, I ran coal generation
3483 facilities and a chemical, and I recognized, we made study
3484 after study trying to decide whether to replace those coal
3485 generation facilities with natural gas, and when natural gas
3486 was much lower, and it was always what you did is, you took
3487 jobs out of the--and replaced that with a lower cost of
3488 natural gas at that particular time. We couldn't make it
3489 work. But in every case, we showed significant job loss. It
3490 was a four to one ratio there, at least, and I think
3491 Congressman Shimkus put a slide up that really shows you what
3492 that really is about.

3493 Mr. {McKinley.} Just in closing in the few seconds that
3494 I have left, you have heard a lot of folks from the other
3495 side try to make this a partisan matter throughout this day,
3496 but your registration, how are you registered?

3497 Mr. {McKinney.} I am a Democrat.

3498 Mr. {McKinley.} Thank you.

3499 Mr. {Whitfield.} Thank you, Mr. McKinley.

3500 Mr. Green, you are recognized for 5 minutes.

3501 Mr. {Green.} Thank you, Mr. Chairman.

3502 Mr. Doggett, I want to thank you for being here to
3503 testify today. The 100-plus-degree temperatures you are
3504 experiencing across Texas and then the extreme cold weather
3505 we had in February are reminders of how important the role
3506 that ERCOT plays in Texas, and I appreciate your working to
3507 ensure Texas has the electricity they need to get through the
3508 extreme temperatures. For members, in Texas, we have our own
3509 grid, and although parts of southeast Texas and parts of
3510 north Texas are not part of it, but ERCOT is our agency that
3511 controls it.

3512 Mr. Doggett, you are here today to testify about the
3513 recent analysis ERCOT conducted on what the CSAPR rule would
3514 mean for Texas, the cross-state rule. In doing so, I noticed
3515 you did not include how natural gas infrastructure would
3516 affect the three scenarios you discussed at length, and I
3517 know it may not be feasible for all the plants to switch from
3518 coal to natural gas but again, with some of our rich
3519 resources we are developing in Texas on the land side, it
3520 seems like some of those could be possible. Why didn't you

3521 or ERCOT account for natural gas in your analysis?

3522 Mr. {Doggett.} We interviewed each of our resource
3523 owners and identified their plans to comply, and in those
3524 interviews, that was not presented as a viable compliance
3525 option.

3526 Mr. {Green.} If you had accounted for natural gas, how
3527 would this have changed your numbers?

3528 Mr. {Doggett.} It would be hard for me to estimate that
3529 impact. I did talk to the Luminant owners and we confirmed
3530 that switching from coal to natural gas for those units was
3531 not an option, but I am unaware of whether that was even an
3532 option for the other plants.

3533 Mr. {Green.} I have been told, and I know recently with
3534 our heat wave in Houston, there was some natural gas plants
3535 taken out of mothballs. I have been told that only 40
3536 percent of those natural gas plants are running. Is that a
3537 correct percentage?

3538 Mr. {Doggett.} Forty percent?

3539 Mr. {Green.} I have been told that natural gas plants
3540 in Texas only run 40 percent of the time.

3541 Mr. {Doggett.} Natural gas delivers a little over 40
3542 percent of our energy, I am sure off peak because they are
3543 not necessary with baseload generation. I am not sure if 40
3544 percent is the number but we economically dispatch the units,

3545 so it is likely that they are not running at off-peak times.

3546 Mr. {Green.} Is there any discussion on trying to make
3547 the baseline natural gas with prices now at \$3.90 per MCF?

3548 Because I know baseload, particularly our nuclear power
3549 plants, we have two in Texas, and also with coal plants. Is
3550 there discussion on trying to do natural gas as a baseload?

3551 Mr. {Doggett.} We had a hearing in Texas yesterday
3552 where one entity outside of ERCOT in east Texas highlighted
3553 that they were going to reverse their fleet and make their
3554 gas units their baseload resources and let the coal units
3555 provide the variability. It was really presented as a
3556 concern because of the increased cost. I am not here to talk
3557 about the increased cost but that was their point, and they
3558 also highlighted the concern with increased maintenance and
3559 decrease in reliability when you use a unit that was designed
3560 for baseload cyclically. That creates maintenance problems.

3561 Mr. {Green.} I understand ERCOT has the authority to
3562 utilize reliability must-run contracts with companies. Can
3563 you explain what these contracts are and how they can used to
3564 mitigate some of the generation capacity we have experienced?
3565 I know you have at ERCOT. Is there a way that those
3566 contracts can be utilized at ERCOT?

3567 Mr. {Doggett.} There is a possibility. I mentioned
3568 earlier that EPA reached out to us yesterday to discuss some

3569 options moving forward, and that was one option that they
3570 mentioned. The challenge there is that we have to have a
3571 method for the resource owner to have some assurance that
3572 they will be given a variance from EPA. We certainly can't
3573 require a resource owner to break the law.

3574 Mr. {Green.} Texas was included both in the SOx and the
3575 NOx and the CAIR program that was rolled out in 2008. while
3576 I am incredibly frustrated not only with how the EPA handled
3577 the possibility of including Texas but frankly their entire
3578 assumption used to justify its inclusion, what do you say to
3579 the critics who say that these companies should have been
3580 working toward these reductions all along since they were
3581 supposed to be stricter standards under CAIR and the Texas
3582 ERCOT should have been better prepared for this. How do you
3583 respond to that?

3584 Mr. {Doggett.} Well, we analyzed the preliminary rule,
3585 and from our analysis of the preliminary rule, it did not
3586 appear likely that Texas would be included.

3587 Mr. {Green.} And believe me, I share your opinion on
3588 that, and we have had this discussion with EPA for a number
3589 of months on both a partisan and bipartisan basis, and it is
3590 frustrating.

3591 Bernstein Research examined the issue, finding that if
3592 Texas utilities would simply run their existing scrubbers

3593 continuously and switch unscrubbed units to lower-sulfur
3594 coal, Texas would likely comply with its SO2 budget under the
3595 rule in 2012, and do you think that is correct?

3596 Mr. {Doggett.} We have been told by the resource owners
3597 that that is incorrect.

3598 Mr. {Green.} Thank you.

3599 Thank you, Mr. Chairman.

3600 Mr. {Whitfield.} At this time I recognize the
3601 gentlelady from California, Ms. Capps, for 5 minutes.

3602 Mrs. {Capps.} Thank you, Mr. Chairman.

3603 We know that numerous independent studies conclude that
3604 any retirements of old, inefficient coal plants can be offset
3605 by large amounts of excess generating capacity, by new
3606 capacity that can be quickly built, and third, by demand
3607 response and energy efficiency measures that can reduce the
3608 amount of generating capacity that is needed at all, but it
3609 is always possible that there will be localized reliability
3610 challenges caused by retiring power plants, and I want to
3611 thank you, Mr. Hanger, for your answers and your responses to
3612 Mr. Doyle's questions. You noted a real-life situation that
3613 our Republican colleagues are often very worried about. You
3614 have demonstrated that the State and the utility and the grid
3615 operator were able at least in this instance to work together
3616 to keep the lights on while protecting the environment, so I

3617 thank you.

3618 Mr. {Hanger.} You are welcome. Thank you.

3619 Mrs. {Capps.} And I want to turn to you, Dr. Tierney,
3620 because Mr. Hanger's response is one approach to dealing with
3621 the potential localized reliability challenges, but hopefully
3622 there are some other flexibilities available as well to
3623 address situations where a plant needed more time and
3624 oftentimes this is the question that arises in a local
3625 community. They don't have time to assure reliability and
3626 the confidence that it engenders.

3627 Ms. {Tierney.} Well, thank you very much for the
3628 question, Representative, and there are quite a few instances
3629 of situations where a plant was going to retire for economic
3630 reasons or for environmental reasons, and it was found in the
3631 local reliability studies to be a problem if there were a
3632 retirement. I can think of an example in Massachusetts where
3633 there was a consent decree negotiated between the
3634 environmental regulators and the owner of the plant in
3635 conjunction with a must-run contract, very similar to what
3636 happened in Pennsylvania, kept the plant operating while
3637 there were remedies put in place. Transmission upgrades were
3638 put in place. Demand management was put in place to reduce
3639 the demand in the area.

3640 Another example is one that I mentioned previously

3641 across the river at the Potomac River Generating Station
3642 where Virginia, the State regulators were interested in
3643 having that polluting plant be shut down. The company wanted
3644 to shut it down. There were applications made to the
3645 Department of Energy to use its emergency authority under
3646 existing law to find a condition under which the plant could
3647 not be retired, and PJM came up with studies of transmission
3648 and transmission was put in place along with other again
3649 alternatives besides just shutting down the plant to keep
3650 that plant operating during the period of the other remedies.
3651 Those are now in place, and the plant looks like it will be
3652 shutting down by voluntary action of the owner.

3653 Mrs. {Capps.} So there are some varieties of localities
3654 where the remedies have been put into place that satisfy the
3655 local people. Would you like--you might want to take a
3656 minute to comment on Mr. McKinney's statements in this regard
3657 to local reliability.

3658 Ms. {Tierney.} I could not agree with him more than
3659 local reliability issues are fundamental and important, and
3660 as one of the other panelists, John Hanger, said when there
3661 are--when there is an addition to the grid in terms of a new
3662 power plant or removal of a power plant from the grid, there
3663 are always local reliability studies. Those have to be done.
3664 And if there were to be a problem, the existing authorities

3665 will allow these varieties of tools in place to make sure
3666 that the lights stay on.

3667 Mrs. {Capps.} Thank you. And finally, I think this is
3668 the last question here, and this is fundamental to me,
3669 opponents of the EPA's public health and environmental
3670 protections are often essentially arguing that we have to
3671 choose between public health protections and the reliability
3672 of our electric grid. I have to give away too that I am a
3673 public health nurse in my background. There is only a minute
3674 left, but Mr. Hanger and Dr. Tierney, my question, are these
3675 goals really in tension? Do we have to choose at the local
3676 level between reducing toxic pollution and keeping the lights
3677 on?

3678 Mr. {Hanger.} I will go first, since I am afraid the
3679 Congressman took offense to my language. The language I am
3680 afraid reflects the truth. Old coal-fired power plants do
3681 emit pollution that can cause health damage. That is why we
3682 have these rules. We are not doing this just to harass the
3683 coal industry or any other industry. This is about human
3684 health. And they are not in tension. That is what has been
3685 demonstrated in Pennsylvania. It has been demonstrated in
3686 many States. We have ways to clean up the coal plants so
3687 they can continue to operate. We can build new coal plants
3688 that don't cause that damage and we have alternative fuels,

3689 and we just should get on with it.

3690 Mrs. {Capps.} Thank you.

3691 Any further comments from you?

3692 Ms. {Tierney.} He said exactly what I would have said.

3693 Mrs. {Capps.} And also from my background, the cost of
3694 damaged health to employees, to neighborhood families, we
3695 haven't really stopped to figure out exactly how that fits
3696 into this balance as well so that when we assess the cost, we
3697 need to look at a wide circumference, and maybe some of the
3698 rest of you would agree. I have 29 seconds--oh, no, I am
3699 over. Thank you.

3700 Thank you, Mr. Chairman.

3701 Mr. {Whitfield.} Thank you very much, and I want to
3702 thank--

3703 Mr. {Rush.} Mr. Chairman, before we conclude, I have a
3704 unanimous consent request.

3705 Mr. {Whitfield.} Okay.

3706 Mr. {Rush.} I can't help but just notice this young
3707 lady, I think this is Mr. Davis's daughter.

3708 Mr. {Davis.} That is correct.

3709 Mr. {Rush.} She has been so well mannered and so
3710 attentive to this proceeding that I just think that we should
3711 just give her a round of applause.

3712 Mr. {Whitfield.} What is her name?

3713 Mr. {Davis.} Micah Davis.

3714 Mr. {Whitfield.} And has she always been this
3715 interested in environmental issues?

3716 Mr. {Davis.} For the last 2 or 3 years, she has been
3717 following me around.

3718 Mr. {Whitfield.} I also have a unanimous consent
3719 request on behalf of Mr. Murphy, who is a member of this
3720 committee. He wants to submit for the record the
3721 Pennsylvania Department of Environmental Protection's
3722 comments regarding the Utility MACT rule and also PJM's
3723 comments on this rule as well, so I will admit that into the
3724 record.

3725 [The information follows:]

3726 ***** COMMITTEE INSERT *****

|
3727 Mr. {Whitfield.} I want to thank the witnesses. Thank
3728 you for your patience. We appreciate your taking time to
3729 give us your thoughtful comments, and we look forward to
3730 working with you as we move forward to help solve these
3731 issues. Thank you.

3732 And the record will stay open for a minimum of 10 days
3733 for any additional comments or documents to be presented.

3734 With that, the hearing is adjourned.

3735 [Whereupon, at 12:54 p.m., the subcommittee was
3736 adjourned.]