

TESTIMONY  
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON ENERGY AND POWER  
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Good morning. My name is Stephen Brick, and I appear today on behalf of the Washington-based Environmental Integrity Project, a nonprofit organization advocating for more effective enforcement of environmental law. I am an independent consultant, having worked for more than thirty years on various energy and environmental policies. During that time, I have represented public utility commissions, state and federal environmental agencies, a wide range of non-profit groups and private industries. I appreciate the opportunity to address the subcommittee.

I have two concerns with the proposed legislation:

- **First, the legislation is unnecessary.** US DOE emergency orders have been issued only rarely, and we expect this to continue in the future. Existing systems and regulations can and are being adapted to address grid reliability-environment conflicts.
- **Second, the legislation grants an environmental “hall pass”** any time DOE issues an emergency order. Environmental regulators—either US EPA or its designee—would be cut out of the process. Environmental controls of all sorts could be turned off during emergency situations with impunity. In addition, the emergency order could become an avenue for exempting older fossil power plants from making required environmental upgrades. This would result in unacceptable environmental degradation and would distort power markets.

The problem that the legislation purports to fix is not unfolding in an emergency fashion. The power sector and its regulators are dealing with the intersection of three factors (1) significant levels of pending fossil power plant retirement, (2) new federal air quality regulations affecting the electric power sector, and (3) a need to maintain the reliability of the nation's electric transmission system. None of these factors is a surprise.

The nation's power plant fleet is ageing, and as new, more efficient capacity has been built, it has become widely understood that some older plants would retire. The utility mercury and air toxics standards, finalized in December 2011, have been under consideration for over two decades, so the electric power sector has had more than adequate time to prepare. Transmission system reliability has been a utility concern for many decades. Plant retirements and new environmental regulations are already being considered within established transmission planning processes.

The changes to the emergency provisions of the Federal Power Act proposed in the bill are the wrong response to our actual situation. We are not faced with an emergency, nor is it in the public interest to resolve potential conflicts in emergency mode. Such a practice would unnecessarily tip the balance away from environmental protection.

I firmly believe that there are legitimate concerns about the reliability impacts of projected power plant retirements, but these are already being addressed by regional transmission organizations, power plant owners, economic and environmental regulators, and the public. Environmental factors can be incorporated into existing planning and regulatory processes in an orderly fashion, insuring that the health and resource benefits of all environmental regulation are achieved while maintaining grid reliability.

In the very rare instance of a DOE emergency order two things can be done to mitigate the environmental impact:

- First, require that all existing environmental controls continue to operate. This is needed to prevent environmental backsliding.
- Second, condition emergency orders arising from retirement deferrals using the following procedure: (1) specify the transmission situations under which the power plant will be needed to protect reliability, (2) determine the environmental consequences of that projected operation, (3) assess options for completing transmission upgrades needed to permit retirement, and; (4) limit any waivers from environmental regulations to those few hours of operation needed to address the reliability shortfalls identified in the analysis.

Under this approach, plant operation would be strictly limited to the specified reliability conditions. Deferred retirements should be limited to one two-year period, giving time for transmission owners to complete necessary upgrades or otherwise resolve the emergency. The operation of plants operating under a deferred retirement scenario should be very low—generally less than 200 hours per year. This procedure allows continued operation of power plants for a limited time under strict reliability conditions to address genuine emergencies. It would not force owners to invest in new pollution control equipment on old plants that they intend to retire. The approach harmonizes reliability and environmental concerns, and it does not require new legislation to be used.

Thank you for your time. I am happy to answer any questions members may have.