

Testimony of John Hanger  
Before the  
U.S. House of Representatives Energy and Commerce Committee  
Subcommittee on Energy and Power  
September 14, 2011, at 9:00 a.m.  
2322 Rayburn House Office Building

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

Good morning. My name is John Hanger and I am President of Hanger Consulting LLC. I appreciate the opportunity to speak with you today concerning the Environmental Protection Agency's new and proposed power sector regulations and I hope to share with you some insights gained over 27 years of experience at the intersection of energy and environmental policy.

I have had the privilege to serve Pennsylvania as both a public utility commissioner and, more recently, as a secretary of environmental protection. I was Pennsylvania DEP secretary between 2008 -2011 and a Commissioner of the Pennsylvania Public Utility Commission from 1993-1998. Throughout this time, the electricity industry has continued to improve environmental performance and most of the industry has installed pollution controls that limit the impact on public health and environment. Reasonable environmental regulations have played a critical role in this progress by appropriately pushing and prodding us along.

Today the industry continues to transform and diversify itself. The recent discoveries of natural gas from shale formations in Pennsylvania and other states will allow us to tap into a

domestic, cleaner fuel that can power America into the future. I am proud to have played a role in making Pennsylvania a major producer of natural gas and ensuring strong rules for its production. I think that the promise of this abundant fuel provides an important backdrop to our discussions today, and, in particular, the concern about replacement power generation.

I begin by noting that just over 48% of the megawatt hours generated in the Commonwealth of Pennsylvania come from coal-fired power plants. Though our emissions are trending downward, Pennsylvania is currently second highest in the nation for emissions of sulfur dioxide, nitrogen oxide and carbon dioxide. However, as we deploy the nation's largest shale gas deposits, we see a path forward to cleaner generation and job creation that promises to reduce health impacts without affecting reliability.

My testimony will cover three points. First, I will discuss the ability of the PJM states to respond to impending EPA regulations. Second, I will provide a recent example involving two power plants in Pennsylvania that sought to retire but were needed for system reliability. Finally, I will explain how EPA, if it so chooses, could take advantage of this example and extend it to the rest of the country to effectively manage power plant retirements while maintaining reliability.

### ***PJM's Analysis Shows the Region Will Have More than Adequate Resources after the EPA Regulations Take Effect***

Pennsylvania is located in the middle of the region known as PJM, which spans 13 states and provides electric service to over 58 million people. PJM is a regional transmission organization that oversees transmission grid operations and operates competitive wholesale

electricity markets. In PJM, all electric generation resources are centrally dispatched. That means the system operator, PJM, decides which plants will run during any given hour based on the plant's cost; the lowest cost plants that can serve the need set the price for all wholesale customers in the PJM region. In order to provide a future price signal to ensure that adequate resources will be available, PJM also operates a forward capacity market known as the reliability pricing model or RPM, through which PJM acquires capacity (both generation and demand resources) for a delivery year that is three years into the future. Units that bid in the auction commit that they will be available to serve customers during the delivery year; units that expect to retire before the delivery year do not bid.

This past May, PJM conducted its capacity auction for the 2014/2015 delivery year, which is the first time period in which both the Cross-State Air Pollution rule and the Mercury and Air Toxics rule will be in effect. In that auction, PJM selected offers to serve the region from energy resources including new generating resources, capacity upgrades to existing power plants, new demand response resources, and new commitments to energy efficiency. The results speak for themselves. As a result of the auction, PJM knows that it will have sufficient resources to meet demand during the delivery year, and also that it will have a reserve margin of 19.6 percent, which is in excess of the target 15.3 percent installed reserve margin in the region. In short, PJM has concluded that it does not expect a system-wide resource adequacy problem from the reduction in cleared coal capacity in RPM and from announced retirements.

With a market design like the one FERC has approved for PJM, these conclusions are not remarkable. Forward capacity markets provide price signals for new resources to enter the

market when they are needed; and resources that are not economic can ramp down or retire in an orderly fashion. Again, just look at Pennsylvania. Recall that I mentioned that 48% of the MWh in Pennsylvania come from coal-fired power plants. Ten years ago, that number was 57%. How could Pennsylvania manage a 15% drop in coal-fired generation? As a result of PJM's competitive markets, other cost-effective resources have been constructed, and PJM has dispatched them more. For example, during that same period, gas-fired generation has increased from 2% to 13%. Between 2000 and 2008, Pennsylvania's gas-fired generation capacity increased by over 8 GW. And at the same time, Pennsylvania's average residential rates, adjusted for inflation, have decreased, while the national average has increased. The generation fleet has become more diverse, and emissions by the state's plants have dropped considerably. All of these developments are positive. Yet, despite them, the quality of the air breathed by citizens of Pennsylvania still does not meet minimum health standards, due in large part to upwind emissions by power plants in other states that enter Pennsylvania.

### ***Other States Can Manage Fleet Transition; A Pennsylvania Case Study***

Some regulators and companies from other states say the grid cannot manage the retirement of a significant amount of coal generation. It is certainly true that electric reliability is critical to the nation's economic health. Our economy depends on the certainty that our electric power supply will be there at all times. Ensuring that the operators of our electricity infrastructure maintain reliable electric service is the responsibility of all energy regulators, both federal and state, and I commend the FERC and state regulators that have appeared here today for their diligence on this front. But I am here to tell you that it can be managed. In

Pennsylvania, we have already faced the retirement of some of our coal-fired power plants and it was done in a responsible, orderly fashion, and the lights stayed on.

Back in December 2009, one of our generation operators, Exelon, decided to retire four coal and oil-fired units with a combined capacity of 933 megawatts at two stations in southeastern Pennsylvania. The four units were:

- *Cromby Unit 1: a 144-megawatt (“MW”) coal-fired unit built in 1954;*
- *Cromby Unit 2: a 201-MW peaking unit that can operate on oil or gas, built in 1955; and*
- *Eddystone Unit 1 and Unit 2: combined capacity of 588-MW coal-fired plants built in 1960.*

These plants, while state-of-the-art when built, are now over fifty years old. They do not produce energy as efficiently as newer technologies, and therefore waste energy while they emit dangerous pollutants. For example, Eddystone unit 1 only captures about 34% of the energy in the coal burned in its boilers, while a new combined cycle gas turbine can capture 60% of the energy in the gas it burns. And while all coal- and oil-fired units emit SO<sub>2</sub>, NO<sub>x</sub>, and mercury, older units like Cromby and Eddystone emit these pollutants at a higher rate than more efficient units. In any event, Exelon concluded that these four units were simply uneconomic given their age and efficiency, wholesale electricity market prices, and new investment that may have been required to meet environmental requirements, particularly with respect to Cromby’s heated wastewater discharges. Thus, it concluded that it could not justify the ongoing capital and operating costs that would be necessary to keep them in operation.

Power plant owners within PJM are required to provide notice to PJM of the proposed deactivation of any unit located in that region. Exelon notified PJM on December 2, 2009 of its

intention to retire the Cromby and Eddystone units as of May 2011. However, after studying the effect of deactivating the units, PJM advised Exelon that deactivation of Cromby and Eddystone would adversely affect the reliability of the PJM transmission system unless 18 different upgrades to the transmission system were completed.

On March 2nd, 2010, PJM announced the schedule on which the units would be allowed to retire based on the anticipated completion dates of the transmission upgrades. This schedule was subsequently revised to allow the units to retire on the following schedule:

- *Cromby Unit 1 and Eddystone Unit 1 by May 31, 2011 (the original date planned by the owner);*
- *Cromby Unit 2 by December 31, 2011 (7 months later than planned); and*
- *Eddystone Unit 2 by May 31, 2012 (12 months later than planned).*

In other words, PJM concluded that all 18 of the transmission upgrades necessary to allow the plants to retire could be designed, constructed, and placed in service within 29 months of the company's announcement of the decision to retire the units.

As Secretary of Pennsylvania's Department of Environmental Protection (DEP), I would have preferred that the units be permitted to retire on the original schedule, especially if the owner wasn't going to make additional investments in Cromby's wastewater discharge systems. However, I certainly was not in a position to dispute PJM's assessment of the need for the upgrades to be completed before the plants could retire. Ultimately, the DEP and Exelon were able to reach agreement on a consent decree that resolved Exelon's ongoing environmental permitting issues by requiring Exelon to retire Cromby Unit 1 and Eddystone Unit 1 as scheduled on or before May 31, 2011, while authorizing Exelon to operate Cromby Unit 2 and

Eddystone Unit 2 for reliability purposes only until their respective retirement dates. Exelon and PJM agreed to explicit operating procedures that would prevent the dispatch of these units except for “Reliability Purposes,” defined as the commitment of the units only “after all [generation] resources have already been committed and additional units are required to help alleviate a ‘Transmission Security Emergency....’” Exelon continues to operate the remaining two units pursuant to this agreement today, though at drastically lower levels than they operated in the past. My understanding is that the vast majority of the employees who worked in the plants have either been redeployed within the company or chosen a voluntary early retirement package. As a result of this agreement, the four old, inefficient, uneconomic units will be retired in a manner that protects reliability and achieves substantial improvements to air and water quality.

### ***Lessons from the Cromby-Eddystone Example for Other Regions***

Though, as I noted, the Cromby and Eddystone units were not retired as a result of EPA air quality regulations,<sup>1</sup> the Cromby-Eddystone example represents a workable model for EPA to follow in resolving similar situations in other states that may arise as it implements its air quality regulations in the coming years. Indeed, five RTOs have informed EPA that they are willing to assist EPA in identifying whether certain plants, needed for reliability, should be

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<sup>1</sup> In the Cromby situation, the Clean Water Act authorized me to impose less stringent thermal effluent limits in a permit than would otherwise be required to meet Pennsylvania water quality standards. If a discharger demonstrates that less stringent limits will assure the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in and on the receiving body of water, I was permitted to approve such less stringent limits. Clean Water Act, 33 U.S.C. § 1326(a). Since I was able to conclude that the sequential shutdown of the units under the terms and conditions of the Consent Decree would eliminate future potential violations and was thus sufficiently protective of the water body and its inhabitants, I authorized the plants to continue operation as needed for reliability.

eligible for an extension of time to achieve compliance.<sup>2</sup> These five RTOs, which include ERCOT, are charged with overseeing the reliability of the electric grid serving 146 million Americans. Last month, they joined in comments to the EPA on the Mercury and Air Toxics rule and stated that they do not believe a blanket extension of time to comply is necessary. Rather, together they advocated a framework to ensure that retiring units do not jeopardize the reliability of the electric system. The “Reliability Safeguard” proposed by the Joint RTO Commenters establishes a unit-specific approach to address any local reliability impacts caused by retiring units.

Notwithstanding the otherwise applicable RTO retirement advance notice requirements which range from 45 days to 26 weeks, the Joint RTO Commenters recommend that EPA grant extensions on a case-by-case basis only to “reliability-critical units” that provide at least two years advance notice of retirement. After receiving the two-year advance notice, the RTO would analyze the request through its planning process, and if it determined that the unit was “reliability critical” and the necessary reinforcements or replacement resources would take more than three years to complete, the unit would be granted an extension of time to comply. Under this proposed targeted “safety valve,” such units would only be allowed to operate “until the reliability issue is remedied via the most expeditious and efficient means available,” but would not be subject to compliance penalties during the extension. Reinforcing the position that this proposed safeguard would only be used in narrow circumstances, the RTOs asserted they “anticipate that [the Reliability Safeguard] would not need to be invoked often, if at all.”

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<sup>2</sup> The Joint RTO comments are attached as Exhibit A.

As I understand it, EPA has similarly broad authority under the Clean Air Act as I did under the Clean Water Act when I authorized the Exelon units to remain in operation while the transmission upgrades were completed. First, EPA can grant one-year extensions under CAA section 112(i)(3)(B) when necessary for the installation of controls. Assuming this could be interpreted to apply to retiring units, this would give units a total of 48 months to allow replacement generation or upgrades to be constructed. As I noted, all 18 upgrades necessary for Cromby and Eddystone to retire will be completed in 29 months. Second, EPA could negotiate an extension for a reliability-critical unit under CAA section 113(a)(4) and allow an additional one-year grace period in an administrative order on consent. In the extremely unlikely event of a “national emergency extension” under CAA section 112(i)(4), the President similarly could authorize an extension for a reliability-critical unit. Finally, in the event that there is an emergency proceeding under section 202(c) of the Federal Power Act, FERC or DOE could authorize an extension for a reliability-critical unit in any order or negotiated consent decree. In short, there are mechanisms to implement the Joint RTO approach and expand the Cromby-Eddystone model to other regions. What is clear, however, is that EPA does not have the authority to issue a blanket extension to all units.

### ***Conclusion***

I would like to conclude by citing some of PJM’s conclusions from a recent report about the question we are here today to discuss. With respect to the potential for significant coal retirements, PJM noted as follows:

*Resource retirement and new resource entry are part of the natural cycle of any well-functioning and competitive wholesale power market. The cycle of retirement and new entry may also help facilitate major policy changes in a more cost-effective manner. Absent resource adequacy and/or local reliability problems, generation retirements are not, per se, an operational negative and may result in enhanced operational reliability and lower costs, taking the public policy context as given. Newer, more efficient generation resources that replace retiring generation may have lower forced outage rates and thus, are more dependable than older generation resources that may be nearing the end of their useful lives. Additionally, new entry generation, demand response and energy efficiency resources may also provide lower cost alternatives to achieve resource adequacy and local reliability.<sup>3</sup>*

In my view, it is time to get on with it, both in PJM and throughout the country. In the event there are local system reliability concerns, the Cromby-Eddystone example demonstrates how power plant owners, RTOs and regulatory agencies can and do find practical solutions to reconcile competing environmental and reliability needs. It demonstrates how important it is for power plant owners to disclose their intended method of complying with impending regulations, whether by retrofitting a plant or choosing to retire it. And it demonstrates how flexibility in environmental regulation exists to allow customized solutions to reliability issues for specific, local circumstances.

EPA should consider the Cromby-Eddystone model as it works to finalize the Mercury and Air Toxics rule. If government and industry work together to work toward compliance with these important rules, we can ensure grid reliability, protection of the public's health, and an orderly transition from uneconomic and environmentally-challenged power plants.

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<sup>3</sup> Coal Capacity at Risk for Retirement in PJM: Potential Impacts of the Finalized EPA Cross State Air Pollution Rule and Proposed National Emissions Standards for Hazardous Air Pollutants, p. 33 (Aug. 2011).

# Exhibit A

## BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

National Emission Standards for	)	
Hazardous Air Pollutants From Coal and	)	
Oil-Fired Electric Utility Steam	)	EPA-HQ-OAR-2009-0234
Generating Units and Standards of	)	
Performance for Fossil-Fuel-Fired	)	EPA-HQ-OAR-2011-0044
Electric Utility, Industrial-Commercial-	)	
Institutional, and Small Industrial-	)	FRL-9286-1
Commercial-Institutional Steam	)	
Generating Units	)	

### JOINT COMMENTS OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, THE MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, THE NEW YORK INDEPENDENT SYSTEM OPERATOR, PJM INTERCONNECTION, L.L.C., AND THE SOUTHWEST POWER POOL

Pursuant to the May 3, 2011 Federal Register notice in the above-referenced proceeding,<sup>1</sup> the Electric Reliability Council of Texas (“ERCOT”), Midwest Independent Transmission System Operator (“MISO”), New York Independent System Operator (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), and the Southwest Power Pool (“SPP”) (the “Joint RTO Commentors” ) submit these comments on the Proposed Rule in the above-referenced proceeding. These entities are the designated Regional Transmission Organizations (“RTOs”) or Independent System Operators (“ISOs”) in their respective footprints, having been so designated by the Federal Energy Regulatory Commission (“FERC”) or, in the case of ERCOT, the Public Utility Commission of Texas. RTOs and ISOs are responsible for ensuring the continued reliability of the bulk power system in order to “keep the lights on” to millions of Americans in our respective footprints. Together the Joint RTO Commentors serve over 146 million Americans. The RTOs and ISOs are independent entities with no financial stake in any generator or other market participant.

These Comments specifically focus on the compliance timeframe discussed in Section V.M. of the Proposed Rule. The Joint RTO Commentors are not taking a position on the merits of the Proposed Rule or the merits of requests for a blanket delay in its implementation. Rather, the Joint RTO Commentors are concerned about the impacts of the implementation timeline for the Proposed Rule.<sup>2</sup> Accordingly, the Joint

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<sup>1</sup> U.S. Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial- Institutional, and Small Industrial- Commercial-Institutional Steam Generating Units, 79 Fed. Reg. 24976 (proposed May 3, 2011) (to be codified at 40 C.F.R. Pts. 60 & 63) (“Proposed Rule”).

<sup>2</sup> The Joint RTO Commentors note that retirement decisions are affected not just by the instant Proposed Rule but by the costs of compliance with the suite of EPA rules including the Cross State Air Pollution

# Exhibit A

Commentors urge that the EPA consider authorizing a targeted backstop reliability safeguard, on a unit-specific basis, to ensure that the compliance deadlines set forth in the Proposed Rule do not cause electric grid reliability issues that cannot be remedied within the proposed compliance deadline.

## I. BACKGROUND

### A. Description of the Joint RTO Commentors

ERCOT manages the flow of electric power to 23 million Texas customers – representing 85 percent of the state’s electric load and 75 percent of the Texas land area. As the independent system operator for the region, ERCOT schedules power on an electric grid that connects 40,500 miles of transmission lines and more than 550 generation units. ERCOT also manages financial settlement for the competitive wholesale bulk-power market and administers customer switching for 6.6 million Texans in competitive choice areas.

MISO is the RTO that provides open-access transmission service and monitors the high voltage transmission system throughout the Midwest United States and Manitoba, Canada. MISO operates one of the world’s largest real-time energy markets and has 93,600 miles of transmission lines under its direction in a region with an estimated population of 40.3 million.

NYISO is a federally regulated, nonprofit corporation established to facilitate the restructuring of New York’s electric industry. NYISO operates a 10,775-mile network of high-voltage lines that carry electricity throughout the state, serving approximately 19.2 million customers, and administers the state’s wholesale energy markets. NYISO is responsible for the New York Control Area which is part of the Eastern Interconnection, a vast area of interconnected power systems that cover most of the eastern US and Canada.

PJM serves all or parts of the states of Illinois, Indiana, Michigan, Kentucky, Tennessee, Ohio, West Virginia, North Carolina, Virginia, Maryland, Delaware, Pennsylvania and New Jersey plus the District of Columbia. PJM is responsible for both the planning and reliable operation of the bulk power electric grid serving over 58 million people in its region. PJM manages over 180,000 MW of generation which collectively serves a peak demand of over 158,000 MW.

SPP is based in Little Rock, Arkansas and serves over 6.2 million households, with approximately 15.5 million consumers. SPP provides the following services to members in nine states: Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. SPP monitors power flow throughout its footprint and coordinates regional response in emergency situations or blackouts.

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Rule, the proposed Clean Water Act section 316(b) cooling water intake rule and the Coal Combustion Residuals Disposal regulation.

# Exhibit A

## B. The Role of RTOs in Ensuring System Reliability

Pursuant to legislative and regulatory directives, the Joint RTO Commentors are charged with ensuring the reliability of the bulk power electric grid in their respective footprints. FERC Order No. 2000<sup>3</sup> and, in the case of ERCOT, Section 39.151(a)(2) of the Public Utility Regulatory Act and Texas PUC Substantive Rule 25.361(b), charge RTOs and ISOs with ensuring the reliable operation of the grid on a daily basis and planning transmission to ensure long term grid reliability. In performing these functions, the ISOs/RTOs must comply with reliability standards promulgated by the North American Electric Reliability Corporation, and, where relevant, applicable state authority.<sup>4</sup>

ISOs/RTOs do not have authority to build generation or to compel existing generation to operate. Rather, the ISO/RTO model is based on a market platform that provides financial incentives designed to facilitate generation adequacy consistent with applicable reliability standards. By contrast, transmission assets are regulated, and as a result, the ISO/RTOs plan for, and have the authority pursuant to their tariffs to direct, the expansion of the transmission grid to address reliability issues.

Under this construct, ISOs/RTOs receive limited notice of a generator unit's intent to retire.<sup>5</sup> Specifically, the rules of the Joint RTO Commentors provide for the following notice periods:

- ERCOT – 90 days notice for units taken out of service for periods that exceed 180 days (ERCOT Protocol Section 3.14.1.1)
- MISO – 26 weeks (MISO Tariff section 38.2.7 and Attachment Y);
- NYISO – 180 days for generators larger than 80 MW and 90 days for generators smaller than 80MW (NYSPC Case No. 05-E-0889),<sup>6</sup>
- PJM – 90 days notice (PJM Tariff section 113.1 and 113.2);
- SPP – 45 days (SPP EIS Protocols Section 12)

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<sup>3</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) ("FERC Order No. 2000").

<sup>4</sup> The Joint RTO Commentors utilize open stakeholder processes as a key feature of their planning processes.

<sup>5</sup> The limited notice requirements reflect the deregulated status of generation, the competitively sensitive nature of generator intentions and the influence of changing projections of future natural gas prices on generator retirement decisions.

<sup>6</sup> *Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Generation Unit Retirements*, Order Adopting Notice Requirements for Generation Unit Retirements (issued and effective December 20, 2005); see also NYISO Technical Bulletin 185, (establishing procedures for generation unit retirements) at [http://www.nyiso.com/public/webdocs/documents/tech\\_bulletins/tb\\_185.pdf](http://www.nyiso.com/public/webdocs/documents/tech_bulletins/tb_185.pdf)

## Exhibit A

Moreover, FERC has indicated that due to the deregulated status of generation, the RTOs do not have authority to simply prohibit units from retiring.<sup>7</sup> Similarly, under the deregulated structure of the ERCOT market, ERCOT does not have the authority to outright prohibit generation retirements.

When an ISO/RTO receives notice of a generation retirement, it assesses the reliability impact. There are numerous factors that affect the retirement reliability assessment. These include, but are not limited to, the operating characteristics of a unit, the number of proposed retirements and the location of the units. Based on this analysis, the ISO/RTO will plan transmission upgrades as necessary to ensure reliability limits are respected.<sup>8</sup> Market response solutions, such as the addition of generation, demand response or energy efficiency resources, could also help mitigate reliability impacts of retiring generation depending upon their location and are considered by the ISO/RTO in its public planning process.

### C. The Impact of EPA's Proposed Rule

The Joint RTO Commentors are concerned that EPA's Proposed Rule may accelerate the number of generation retirements as generation asset owners assess the costs of complying with this rule in the context of a host of new environmental imperatives being imposed on them. For several, these new requirements could render their assets uneconomic in the ISO/RTO market environment. Environmental compliance is a cost of doing business in a market environment. However, if the impact of the EPA rulemakings increases retirements to the point of creating reliability violations without providing for adequate time to respond to the reliability concerns, this could undermine the reliability of the electric grid for an unacceptable prolonged period.

Admittedly, it is difficult to assess the full scope of local and regional reliability impacts absent information from each of the asset owners as to their intentions to retrofit or retire their units. Unfortunately, those decisions are not fully known at this point because they will be driven, in part, by the provisions of the final EPA rules, their relationship to other environmental rules and future market conditions such as the projected costs of competing fuels and forms of generation. Even if overall regional or national levels of capacity remain sufficient, local reliability impacts, the extent of which are still unknown, can have a profound effect on ensuring system reliability within specific areas that can serve substantial load, such as urban areas.<sup>9</sup>

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<sup>7</sup> See *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053 at P 137 (2005) (where FERC stated: "we are rejecting the specific language . . . that provides that PJM can "require" generators to continue to operate for an indeterminate period, because PJM has not adequately shown that it has the authority to require generators to operate beyond a reasonable notice period.").

<sup>8</sup> Ideally, market based solutions would resolve any reliability issues. However, to the extent the market does not respond, or cannot respond in a timely fashion, the transmission planning process is designed to ensure system capacity is adequate to maintain system reliability.

<sup>9</sup> The Proposed Rule recognized that local reliability impacts were not analyzed. See Proposed Rule at 25055.

## Exhibit A

Although the impacts cannot be stated with certainty, given the potential reliability issues that could result from the impact of this rule within the context of several EPA rulemakings, the Joint RTO Commentors respectfully request that the EPA consider revisions that provide for an extension process that would, in essence, allow for the continued operation of units – “Reliability Critical Units” -- identified by the ISO/RTO through its retirement analysis as necessary to maintain grid reliability. As described in more detail below, the extension would be tailored to the specific reliability need, and would only be effective until such time the reliability issue is remedied via the most expeditious and efficient means available, whether that is transmission reinforcements and/or through replacement resources.

### **D. The Scope of Requested Relief**

As noted, the Joint RTO Commentors are *not* taking a position on the merits of the Proposed Rule itself or the EPA’s findings as to the long term health and societal benefits of compliance with the Proposed Rule. Rather, the Joint RTO Commentors proposed remedy is focused on addressing potential reliability impacts resulting from the Proposed Rule which cannot be remedied in time to meet the strict compliance deadlines proposed.

### **E. The Joint RTO Commentors Proposal for Inclusion of a Reliability Safeguard in the Final Rule**

The Joint RTO Commentors also are not asking for a blanket extension of the proposed rule’s compliance timeframe. The Proposed Rule provides that existing generators must comply with the final rule no later than 3 years from the effective date of the final rule. A 1-year extension may be granted if pollution control equipment is being installed to achieve compliance.<sup>10</sup> Further, the Proposed Rule would interpret the Clean Air Act such that States can grant the 1-year extension when on-site replacement power is being constructed to replace a retiring generating unit.<sup>11</sup>

Given the potential for reliability impacts due to generation retirements, we ask that the final rule contain a narrowly-drawn reliability “safety valve” such that a retiring generator could be granted an extension for the time needed to implement reliability solutions to replace the subject resource. The Final Rule should define a clear up-front process, such as use of a “pro forma” Consent Decree, to implement this process.<sup>12</sup> Depending on the circumstances, as identified by the ISO/RTO to the EPA, the time period could be for an additional fourth year under the rule or longer if the

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<sup>10</sup> Proposed Rule at 25,054.

<sup>11</sup> Proposed Rule at 25,055.

<sup>12</sup> On a unit-specific basis, an agreed date certain would be determined by the RTO/ISO and provided to EPA. The date certain would reflect a realistic estimate as to the time needed for planning and constructing transmission upgrades or securing alternative resources to address the specific reliability challenges being addressed.

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circumstances so require. This “safety valve” would be limited to situations where the following conditions are met:

- The asset owner provides notice of retirement to the ISO/RTO within 12 months of the effective date of the rule, or January 1, 2013, whichever is earlier;
- The ISO/RTO, after analysis through its public planning process, identifies the unit as a “Reliability Critical Unit”; and
- The transmission reinforcements and/or replacement resources (generation, demand response and/or targeted energy efficiency) that are being installed to mitigate the reliability impacts are expected to take more than 3 years to be placed into service.<sup>13</sup>

Linking eligibility for the “pro forma” Consent Decree extension to the provision of an accelerated notice of retirement is key to this proposal. This advance retirement notice could provide at least two years’ advance notice of retirement, notwithstanding the substantially shorter timeframes that would otherwise apply, as mentioned. The Joint RTO Commentors believe that timely notice to the ISO/RTO (and potentially EPA) of a unit owner’s intentions is critical to ensuring that there is a realistic opportunity for the ISO/RTO to plan and direct implementation of transmission upgrades or ensure adequate alternative resources are available to maintain local and regional reliability challenges that might result from the retirement. The process would apply on a case-by case basis and the Joint RTO Commentors anticipate that it would not need to be invoked often, if at all.

The proposed “safety valve” is intended to provide a “safe harbor” for those retiring generators who meet the eligibility criteria – including providing the advanced notice of retirement – as outlined above. It provides for a process which is clear to all affected parties up front. Moreover, the proposed process is a more cost effective and efficient means to address both environmental and reliability goals without having to resort to last minute appeals to the Secretary of Energy to exercise his authority under Section 202(c) of the Federal Power Act<sup>14</sup> and Section 301(b) of the Department of Energy Organization Act<sup>15</sup> to order the unit to remain operational.

The Joint RTO Commentors stand ready to work with the EPA to ensure that this reliability safety valve is available in the narrow circumstances described above. Incorporating such an approach in the Final Rule will enable the EPA to meet Congress’

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<sup>13</sup> The above process is presented as a proposal from the Joint RTO Commenters. The individual RTOs pledge to work with the EPA on the specific implementation details of this proposal as applied to their region.

<sup>14</sup> 16 U.S.C. § 824a(c).

<sup>15</sup> 42 U.S.C. § 7151(b)

## Exhibit A

mandate for environmental compliance embodied in the Clean Air Act while also respecting Congress' mandate to ensure the reliability of the bulk power system as per the provisions of the Energy Policy Act of 2005.

Respectfully submitted:

**/s/ Craig A. Glazer**

Craig A. Glazer  
Vice President – Federal Government  
Policy  
Jennifer H. Tribulski  
Senior Counsel  
**PJM Interconnection, L.L.C.**  
1200 G Street, N.W., Suite 600  
Washington, D.C. 2005  
[glazec@pjm.com](mailto:glazec@pjm.com)  
[tribuj@pjm.com](mailto:tribuj@pjm.com)

**/s/ Carl R. Patka**

Carl R. Patka  
Assistant General Counsel  
Ray Stalter  
Director of Regulatory Affairs  
**New York Independent System  
Operator, Inc.**  
10 Krey Boulevard  
Rensselaer, New York 12144  
[cpatka@nyiso.com](mailto:cpatka@nyiso.com)  
[rstalter@nyiso.com](mailto:rstalter@nyiso.com)

**/s/ Matt Morais**

Matt Morais  
Assistant General Counsel  
**ERCOT (Electric Reliability Council of  
Texas)**  
7620 Metro Center Drive  
Austin, Texas 78744  
[Mmorais@ercot.com](mailto:Mmorais@ercot.com)

**/s/ Stephen G. Kozey**

Stephen G. Kozey  
Vice President, General Counsel and  
Secretary  
**Midwest Independent Transmission  
System Operator, Inc.**  
P.O. Box 4202  
Carmel, Indiana 46082-4202  
[skozey@misoenergy.org](mailto:skozey@misoenergy.org)

**/s/ Paul Suskie**

Paul Suskie  
Senior Vice President - Regulatory Policy  
and General Counsel  
**Southwest Power Pool, Inc.**  
415 North McKinley  
#140 Plaza West  
Little Rock, Arkansas 72205  
[psuskie@spp.org](mailto:psuskie@spp.org)