COMMISSIONER JON W. MCKINNEY

Testimony Summary

- I introduced a NARUC Resolution that promotes increased flexibility for the implementation of EPA Rules by:
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  - Allowing utilities to coordinate the closure and/or retrofitting of existing electric generating units in an orderly manner;
  - Allowing regulatory options for units that are necessary for grid reliability that commit to retire or repower; and
  - Asking FERC work with the EPA to develop a process that requires generators to provide advanced notice.
- Pointing out that PJM, MISO, SPP, NY ISO, and ERCOT submitted comments requesting a "safe harbor" (i.e. not face penalties for violation of the EPA rule) if they provide the Regional Transmission Organization with notice of their intended shutdown at least two years before the EPA compliance deadline.
- WV has made major improvement with utilities investing $4.0+ billion dollars with a 89% reduction in SO_2. Aggregated capital cost of new rules will exceed another $2.0+ billion dollars.
- I am concerned by the suggested impacts to WV and the US of latest CASPR and MACT rules (as indicated by recent NERA analysis or EEI retirement summary)
  - Increased electricity cost of 12.9% for WV and 11.5% for US
  - Net job losses of 38,500 for WV and 1.44M for US
  - Total US cost of $184B for US
  - FERC recently projected 81GW of coal generation retirement vs. 11GW projected by EPA (Announced retirements already at 44GW)
- Consider passage of the TRAIN Act and include pertinent portions of the NARUC resolution in the bill.

Mr. Chairman, thank you for the opportunity to appear before the Committee on this extremely important issue. I am Jon McKinney, a Commissioner for the Public Service Commission (PSC) of West Virginia and Chair of the Clean Coal Subcommittee of NARUC. My background is in engineering and business prior to being appointed a Commissioner.

The West Virginia Commission has a broad scope of duties that includes regulation of all utilities in WV (electricity, natural gas, water and sewer, telecom and some cable) as well as solid waste, gas pipeline, transportation (taxis, buses, trucking), graveyards, and railroads. Our work touches many of the most vital services our citizens depend on every day. Each year we decide 2700+ cases, issue 5000+ orders and handle 10000+ informal and formal complaints.

I am used to being on the other side of the bench, listening to many different perspectives. You have asked for my perspective on the impact of a number of new EPA regulations affecting the power sector. So I'd like to share with you what I know about the impacts that environmental regulations have already had in WV, and my overarching concern that the pace of these additional requirements does not allow sufficient time to evaluate their potential impacts on reliability, or for cost-effective implementation.

I am an economic regulator and it is my sworn duty to balance the interests of ratepayers, utility companies and the State. That is a tough assignment. We regularly hear many passionate pleas from industrial customers that they will be driven out of business if electricity rates increase too much, or from residential customers who are trying to balance budgets or live on fixed incomes. We have heard these arguments frequently in recent years as power companies have installed new equipment to comply with existing environmental requirements. According to EPA's Acid Rain database, in 1990 power plants in WV emitted nearly 970,000 tons of SO2.

By 2010, those emissions were reduced to less than 110,000 tons, an 89% reduction state-wide. WV has made remarkable progress in assuring that the air is clean for its own citizens and our neighbors.

To make these improvements, our electric industry has spent some $4.0+ billion dollars on environmental controls, and that cost has been passed on to the ratepayers. Even though WV has relatively low electric rates, those rates have increased by nearly 40% in recent years. And although I am concerned about the cost of compliance, I am equally concerned about reliability. The plants that have been equipped with modern pollution controls are generally the largest and newest plants, but there are many smaller plants throughout WV and other states that not only provide generation, but also assure that we have a stable electric grid. As a result of the EPA's proposed and final rules, many of these plants are expected to retire, quite abruptly, over the next few years. One utility has announced that at least three plants in WV, totaling over 1800 MW, will retire by 2014 if all of EPA's rules become effective. In addition, an estimate of the capital required to make the additional modifications needed to meet the new proposed EPA rules is $2.0+B.

The WV Commission is tasked with ensuring that the WV consumers receive reliable power. We have learned recently that reliability is king and that concerns about reliable service are one of the greatest concerns to customers. During a recent severe blizzard in southern WV over the Christmas holidays, during peak demand, power was interrupted for many residents for an extended period. Obviously, in very cold weather this is a dangerous situation and we and the electric companies were swamped with complaints from ratepayers, county commissions, legislators, and emergency response providers. My concern is that the new EPA rules will denigrate reliability leading to more major interruptions during peak electrical usage.

My two-fold concerns for both reliability and ratepayer cost that will be negatively impacted by currently promulgated and proposed EPA rules led me to introduce a Resolution at the July NARUC meeting that promotes increased flexibility for implementation of EPA rule makings. That resolution was passed and is now the official policy of NARUC. The Resolution is attached, is summarized below and specifically asks that State Commissioners promote State and federal environmental and energy policies that will enhance the reliability of the nation's energy supply and minimize cost impacts to consumers.

Reliable energy supply is vital to support the nation's future economic growth, security, and quality of life.

There are three key elements that the EPA must successfully manage when implementing the new and proposed regulations to ensure continued reliability on the nation's electric grid while lessening generation cost increases upon our Nation's ratepayers during these difficult economic times, should they move forward with implementation of the regulations currently under consideration. These elements which are all equally important are: (1) flexibility; (2) coordination with utilities; and (3) coordination with State and federal regulators.

(1) Flexibility: A retrofit timeline for multimillion dollar projects may take up to five-plus years, considering that the retrofit projects will need to be designed to address compliance with multiple regulatory requirements (some of which are not finalized and may change mid-design) and require several steps that may include, but are not limited to: utility regulatory commission approval, front-end engineering, environmental permitting, detailed engineering, construction and startup. Timelines may also be lengthened by the large

number of multimillion dollar projects that will be in competition for the same skilled labor and resources throughout the Nation.

Flexibility with the implementation of EPA regulations can lessen generation cost increases because of improved planning, selection of correct design for the resolution of multiple requirements, greater use of energy efficiency and demand-side resources, and orderly decision-making. Additionally, some generators that will be impacted by the new EPA rulemakings are located in constrained areas or supply constrained areas and will need time to allow for transmission or new generation studies to resolve reliability issues. The North American Electric Reliability Corporation (NERC) and regional RTOs will need time to study reliability issues associated with shutdown or repowering of generation. Flexibility will allow time for these needed studies.

2. Coordination: Close coordination between the various federal and State regulatory bodies and agencies will also be necessary for continued grid reliability. The Federal Energy Regulatory Commission (FERC), through its oversight of NERC, has authority over electric system reliability, and is in a position to require generators to provide sufficient notice to FERC, system operators, and State regulators of expected effects of forthcoming health and environmental regulations on operating plants to allow an opportunity for meaningful assessment and response to reliability claims.

The Resolution asks Commissioners to support efforts to promote State and federal environmental and energy policies that will enhance the reliability of the nation's energy supply and minimize cost impacts to consumers by:

- Allowing utilities to coordinate the closure and/or retrofitting of existing electric generating units in an orderly manner that will ensure the continued supply of electricity and that will allow power generators to upgrade their facilities in the most cost effective way, while at the same time achieving attainable efficiency gains and environmental compliance.

- Allowing regulatory options for units that are necessary for grid reliability that commit to retire or repower.
- Allowing an EPA-directed phasing-in of the regulation requirements.
- Establishing interim progress standards that ensure generation units meet EPA regulations in an orderly, cost-effective manner.

- Encourages utilities to plan for EPA regulations, and explore all options for complying with such regulations, in order to minimize costs to ratepayers.

- Asking that FERC and EPA work to develop a process that requires generators to provide notice to FERC, system operators, and State regulators of the expected effects of forthcoming EPA regulations on operating plants to allow an opportunity for meaningful discussion, assessment and response to reliability issues. Additionally we suggested that NARUC and State Commissions should actively coordinate with their environmental regulatory counterparts, FERC, and the electric power sector ensuring electric system reliability and encourage the use of all available tools that provide flexibility in EPA regulation requirements reflecting the timeline and cost efficiency concerns embodied in this resolution to ensure continuing emission reduction progress while minimizing

degradation of reliability, capital costs, rate increases and other negative economic impacts while meeting public health and environmental goals.

Recently, several regional reliability organizations submitted comments to EPA echoing these concerns. In comments submitted on the utility MACT rule August 4, the Southwest Power Pool, ERCOT, PJM, the Midwest Independent Transmission System Operator, and the New York Independent System Operator, all requested a "safe harbor" for units that have to retire or which may be uneconomic to retrofit, but which may be critical for system reliability due to local transmission constraints. All of these organizations indicated that an additional two years or more might be needed to assure that such retirements do not compromise the reliability of the electricity grid. Their comments are also attached to my written testimony.

Lack of implementation time will leave utilities with only two choices both of which have significant negative reliability impacts: either scale back on generation to meet rulemaking requirements (in some cases as much as 50%) or shutdown prematurely. Local or regional congestion will be a major issue in many areas and that will take multiple years to resolve. As an example, DC has been working for years to shutdown two old coal plants but due to congestion issues still have them in a "must run" category. This leads to following major concerns:

- Compliance Deadlines. EPA is not providing sufficient time to design, permit, and install major emissions control technologies on large amounts of existing coal-fired capacity that are necessary to comply with EPA's Cross-State Air Pollution Rule (beginning in 2012, with more stringent limits in 2014) and the proposed Utility MACT Rule (by the end of 2014 or by end of 2015).

- Major Capital Expenditures, Mostly Before 2015. There would be much more capital spent in the U.S. to comply with these new EPA rules by 2020, as compared to the amounts that were spent on all utility air pollution controls over the previous 20 years.

- Significant Power Plant Retirements due to the Combination of the High Costs of Compliance and the Short Deadlines. FERC recently projected 81GW of coal generation retirement vs. 11GW projected by EPA. The NERA analysis project four times the amount of retires as EPA. The total amount of announced coal generating plant retirements (including all reasons) are 44GW or 13% of the total coal-fired generation. Clearly the immediate impact of the regulations is far greater than expected.

- Electric Grid Reliability Problems during 2014-2016. This impact is projected to occur due to the large number of retirements plus the substantial amount of idled capacity due to insufficient time to design, permit, and install major emissions controls as well as the wide-scale unit outages that are required to "tie-in" these major new emission controls. These greatest capacity reductions will probably occur in the PJM region.

- Very High Electricity Rate Increases Due to High Capital Costs of Compliance and New Replacement Capacity. In WV and the Midwest these rate increases will hit electricity intensive manufacturing particularly hard, leading to industrial plant shutdowns and substantial job losses. It will also be disproportionately borne by consumers in some of the poorest rural counties in Appalachian Region states where there are many customers who are unemployed or on fixed incomes.

The impact of these rules goes far beyond the utility sector itself, and could threaten recovery in the broader economy. The American Coalition of Clean Coal Electricity (ACCCE)

recently asked NERA Economic Consulting to model the economic impacts of the proposed CATR and MACT Rule together. Overall the analysis shows that in 2016 electricity rates will increase by 11.5% in the US generally, and by another 12.9% in WV. Moreover, net job losses are projected to be 1.44 million for the total US and 38,500 for WV. A large portion of these losses will be borne by states and rural counties that are already experiencing much higher electricity rates due to previous environmental investments**.** Though there will be some temporary gains in employment due to construction of new pollution control and new gas-fired generation, these will be more than offset by (1) direct losses at shuttered coal-fired plants and related supply chain losses in mining and transportation; (2) reduction of industrial activity (and hence jobs) in these same states as higher electricity rates result in industrial plant shutdowns and output cuts; (3) indirect losses occurring as local supporting employment dwindles in the states and localities experiencing these losses; and (4) wide-scale job losses across the U.S. as consumers and business shouldering higher electricity rates cut back on consumption of other goods reducing GDP overall and jobs in a variety of industries. I believe that more analysis needs to be done after the two rules are finalized and before implementation. If such impacts continue to be shown, they are unacceptable in the current fragile state of our economy.

The costs, feasibility, and reliability impacts of EPA's regulations have not been thoroughly examined, and the consequences of implementing these requirements without adequate review could be irreparable. We have just recently seen the dramatic consequences of a major power outage in the western US, where 1.4 million people were without power and, in addition to many other consequences, millions of gallons of sewage flooded the San Diego harbor. We cannot afford to risk the health and safety of millions of Americans by compromising the security of our electricity grid, and should not burden electricity customers

with excessive costs by inflexible implementation of environmental regulations. Greater flexibility would preserve electric reliability and mitigate additional rate increases.

So, with these challenges and solutions in mind, I urge you to consider passage of the TRAIN Act, and to include pertinent portions of the NARUC resolution in the bill. At a minimum, before any new EPA regulation is implemented or promulgated, DOE and FERC should be required to obtain information about unit retirements and operational changes by a date certain so that they can properly analyze local and regional reliability issues and the results can be considered by the Congress.

Thank you.

Attachments

- NARUC Resolution
- NERA analysis
  - Summary of proposed CASPR and MACT Rules
  - Average Regional Electricity Price Increases Map
  - Net Employment Losses Table
- Train Wreck slide
- Coal Fleet Retirement Announcements
- SPP letter to EPA
- Joint RTO letter to EPA
- ERCOT letter concerning reliability
- PJM letter to EPA

Resolution on Increased Flexibility for the Implementation of EPA Rulemakings

WHEREAS, The Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) adopted a resolution on the *Role of State Regulatory Policies in the Development of Federal Environmental Regulations* on February 16, 2011; including the following statements:

- **WHEREAS**, NARUC at this time takes no position regarding the merits of these EPA rulemakings; *and*
- **WHEREAS**, Such regulations under consideration by EPA could pose significant challenges for the electric power sector and the State Regulatory Commissions with respect to the economic burden, the feasibility of implementation by the contemplated deadlines and the maintenance of system reliability; *and*

WHEREAS, NARUC wishes to continue to advance the policies set forth in the resolution as it relates to the proposed EPA rulemakings concerning the interstate transport of sulfur dioxide and nitrogen oxides, cooling water intake, emissions of hazardous air pollutants and greenhouse gases, release of toxic and thermal pollution into waterways, and management of coal combustion solids; *and*

WHEREAS, NARUC recognizes that a reliable energy supply is vital to support the nation's future economic growth, security, and quality of life; *and*

WHEREAS, There are many strategies available to States and utilities to comply with EPA regulations, including retrofits and installation of pollution control equipment, construction of new power plants and transmission upgrades to provide resource adequacy and system security where needed when power plants retire, purchases of power from wholesale markets, demand response, energy efficiency, and renewable energy policies – the collection of which can be implemented at different time frames by different interested parties and may constitute lower cost options that provide benefits to ratepayers; *and*

WHEREAS, A retrofit timeline for multimillion dollar projects may take up to five-plus years, considering that the retrofit projects will need to be designed to address compliance with multiple regulatory requirements at the same time and requiring several steps that may include, but are not limited to: utility regulatory commission approval, front-end engineering, environmental permitting, detailed engineering, construction and startup; *and*

WHEREAS, Timelines may also be lengthened by the large number of multimillion dollar projects that will be in competition for the same skilled labor and resources; *and*

WHEREAS, NARUC recognizes that flexibility with the implementation of EPA regulations can lessen generation cost increases because of improved planning, selection of correct design for the resolution of multiple requirements, greater use of energy efficiency and demand-side resources, and orderly decision-making; *and*

WHEREAS, Some generators that will be impacted by the new EPA rulemakings are located in constrained areas or supply constrained areas and will need time to allow for transmission or new generation studies to resolve reliability issues; *and*

WHEREAS, The North American Electric Reliability Corporation (NERC) and regional RTOs will need time to study reliability issues associated with shutdown or repowering of generation; *and*

WHEREAS, NARUC recognizes that flexibility will allow time for these needed studies, *and*

WHEREAS, The Federal Energy Regulatory Commission (FERC), through its oversight of NERC, has authority over electric system reliability, and is in a position to require generators to provide sufficient notice to FERC, system operators, and State regulators of expected effects of forthcoming health and environmental regulations on operating plants to allow an opportunity for meaningful assessment and response to reliability claims; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2011 Summer Committee Meetings in Los Angeles, California, supports efforts to promote State and federal environmental and energy policies that will enhance the reliability of the nation's energy supply and minimize cost impacts to consumers by:

- Allowing utilities to coordinate the closure and/or retrofitting of existing electric generating units in an orderly manner that will ensure the continued supply of electricity and that will allow power generators to upgrade their facilities in the most cost effective way, while at the same time achieving attainable efficiency gains and environmental compliance; *and*

- Allowing regulatory options for units that are necessary for grid reliability that commit to retire or repower; *and*

- Allowing an EPA-directed phasing-in of the regulation requirements; *and*

- Establishing interim progress standards that ensure generation units meet EPA regulations in an orderly, cost-effective manner; *and be it further*

RESOLVED, That commissions should encourage utilities to plan for EPA regulations, and explore all options for complying with such regulations, in order to minimize costs to ratepayers; *and be it further*

RESOLVED, That FERC should work with the EPA to develop a process that requires generators to provide notice to FERC, system operators, and State regulators of expected effects of forthcoming EPA regulations on operating plants to allow an opportunity for meaningful assessment and response to reliability issues; *and be it further*

RESOLVED, That NARUC and its members should actively coordinate with their environmental regulatory counterparts, FERC, and the electric power sector ensuring electric system reliability and encourage the use of all available tools that provide flexibility in EPA regulation requirements reflecting the timeline and cost efficiency concerns embodied in this resolution to ensure continuing emission reduction progress while minimizing capital costs, rate increases and other economic impacts while meeting public health and environmental goals.

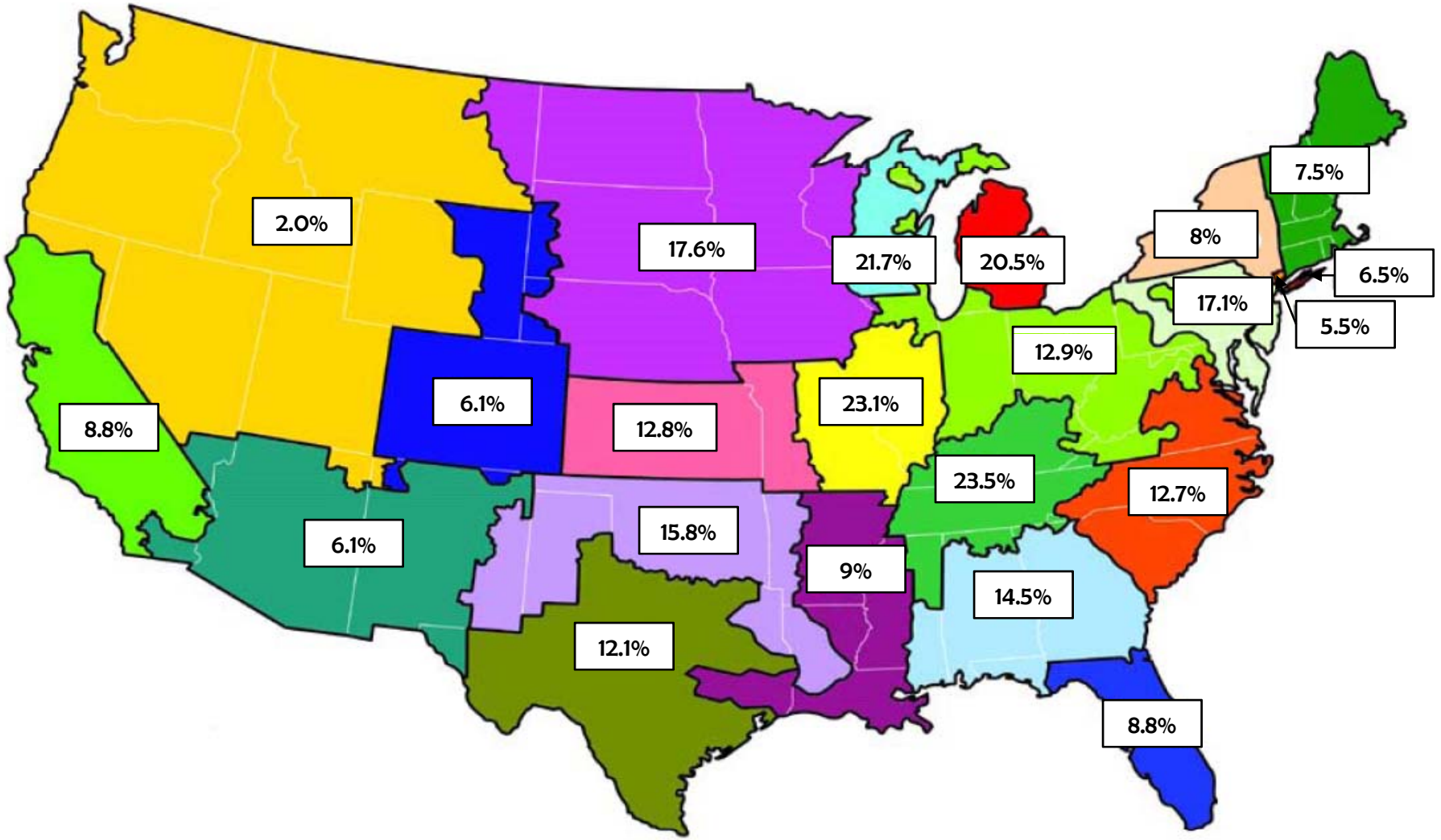
Sponsored by the Subcommittee on Clean Coal and Carbon Sequestration and the Committees on Electricity and Energy Resources and the Environment
Adopted by the NARUC Board of Directors July 20, 2011

PROPOSED CATR AND UTILITY MACT RULES

June 2011

	NERA INITIAL ANALYSIS	EPA ANALYSIS
MODELS	NEMS, REMI and NERA Retirement Model	IPM
EMISSION CONTROLS	531 GW	354 GW
ANNUALIZED COST	$17.8 billion	$14.4 billion
TOTAL COST (PRESENT VALUE)	$184 billion	$124-$168 billion
U.S. ELECTRICITY PRICE	11.5 percent average increase in 2016	1.5 percent increase in 2014 for CATR and 3.7 percent increase in 2015 for MACT
REGIONAL ELECTRICITY PRICES	Regions covering all or part of 24 states have average price increases of 12.1 percent to 23.5 percent in 2016	Regional impacts of 0 to 5 percent in 2014 for CATR and 1.4 to 7.1 percent in 2015 for MACT
ADDITIONAL COAL RETIREMENTS	47.8 GW	11 GW
COAL DEMAND	10 percent reduction in 2016	3 percent reduction in 2015
NATURAL GAS PRICES	17 percent increase	Less than 2 percent increase
NATURAL GAS EXPENDITURES	$8.2 billion/yr higher costs for residential, commercial and industrial sectors	No information provided by EPA
U.S. EMPLOYMENT	Economy-wide net employment loss of 1.44 million job-years by 2020	For MACT, a one-time increase of 30,900 construction jobs, as well as 9,000 in possible jobs/year in the electric sector. No information provided for CATR.

Average Regional Electricity Price Increases in 2016 due to Transport Rule and MACT Proposals



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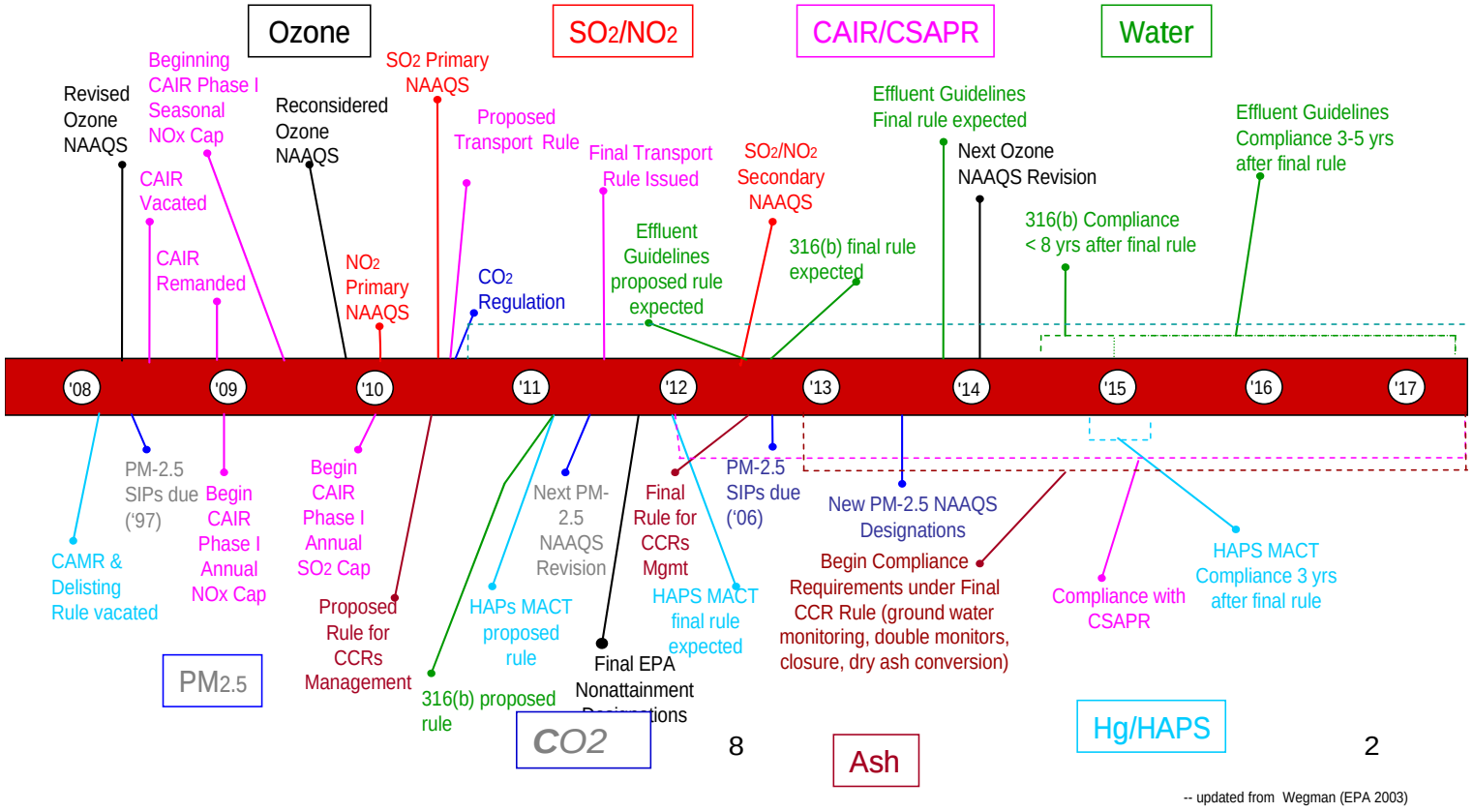
Net Employment Losses Due to EPA's Proposed Transport and MACT Rules

June 2011

	Net Employment Losses 2013 – 2020 (Job-Years)
FLORIDA	135,000
ILLINOIS	48,000
INDIANA	51,500
IOWA	26,500
MICHIGAN	40,000
MINNESOTA	12,500
MISSOURI	76,000
MONTANA	21,000
NEW MEXICO	9,000
NORTH CAROLINA	47,000
OHIO	53,500
PENNSYLVANIA	59,000
VIRGINIA	50,000
WEST VIRGINIA	38,500
WISCONSIN	24,500
TOTAL FOR 15 STATES ABOVE	692,000
U.S. TOTAL	1.44 million

"Net" employment impacts take into account both job gains and job losses. Job losses outnumber job gains by four to one over the period 2013-2020. Employment numbers are rounded.

US EPA Regulatory Agenda Impacting Coal-Fired Generating Plants



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-- updated from Wegman (EPA 2003)

Coal Fleet Retirement Announcements

Following is a summary of announced retirements of specific coal plants under which approximately 44,000 MW of generation (or 13% of the 339 GW of total coal-fired generation in 2010) will be retired between 2010 and 2022.[1] Some units will be replaced with natural gas generation.[2]

Company	Total MW	State	Year(s) Built	Year(s) Will Retire	Units Retiring/Notes
AEP[3]	6,664	Various	1944-1980	2012-2014	27 units in 6 states (OH, WV, VA, IN, KY, TX)
AES	188	NY	1951, 1953	2011	2 units
Alliant	428	IA	1921-1968	2010	12 units
Ameren[4]	923	MO	1953-1961	2022	4 units
APS[5]	634	AZ	1963, '64	2015	3 units (Four Corners)
Black Hills	44	CO	1955, '59	2013	2 units
Consumers	971	MI	1952-1958	2017	7 units
Dominion[6]	2,400	various	1952-1992	2013-2017	17 units in 3 states (MA, IN, VA)
DTE[7]	169	MI, CA	1952, '87, '89	2010-2011	4 units
Duke[8]	3,584	various	1940-1969	2011-2018	30 units in 4 states (NC, SC, IN, OH)
Dynegy	489	IL	1953-1959	2011-2013	4 units
Edison Int'l[9]	371	IL	1955	2010	2 units
Empire District	88		1950, 1954	2018	2 units
Exelon	895	PA	1954, 1960	2011-2012	3 units
First Energy[10]	2,004	OH	1950-1968	2010-2012	12 units
GenOn	482	VA	1949-1957	2012	5 units; Potomac River Generating Station
Madison G&E	178	WI	1938-1961	2010-2012	5 units
NiSource[11]	384	IN	1956, '59, '70	2012	3 units
NRG[12]	440	DE	1951-1970	2010-2013	4 units
NV Energy	342	NV	1965, '68, '76	2016	3 units
Otter Tail	130	MN	1959, 1964	2017-2018	2 units
PGE	601	OR	1980	2020	Will retire Boardman plant 20 years early
Progress[13]	2,532	NC, FL	1951-1972	2011-2020	13 units
Southern[14]	10,120	GA	1963-1967	2011-2013	5 units
TransAlta[15]	1,460	WA	1971	2019-2024	2 units (Centralia)
TVA[16]	4,294	various	1952-59	2012-2117	24 units in 3 states (TN, AL, KY)
WE Energies	112	MI	1964, 1966	2010	2 units
Xcel[17]	1,548	CO, MN	1951-1968	2010-2022	12 units
Others[18]	1,835	various	1948-2004	2010-2026	
	44,310				

[1] Retirements are taking place for a variety of reasons, including plant age, fuel prices (i.e., low natural gas prices), decreased demand, consent decrees and the settlement of EPA complaints, the projected cost of complying with the pending EPA regulations, etc. Because some plant closure details and/or plans for replacement generation have not been finalized, it is not possible to determine the exact number of closures, the mix and quantity of generation replacing the retiring coal units, or the exact amount of emissions reductions.

[2] To the degree that retiring coal plants are replaced with natural gas generation, mercury and SO_2 emissions will be virtually eliminated and CO_2 emissions reduced by almost half at those units.

[3] As part of its plan for complying with EPA regulations (released 6/09/11), AEP announced that it would be retiring 6,000 MW of coal-fired generation—some of which will be replaced with natural gas units—belonging to the following AEP subsidiaries: Kentucky Power, Indiana Michigan Power, Southwestern Electric Power, Ohio Power, Columbus Southern and Appalachian Power . Some of the plant retirements are part of a settlement agreement with EPA.

[4] Ameren, in Feb. 2011 IRP filing in MO, indicated it would likely close Meramec 1-4 due to the cost of meeting pending EPA regulations.

[5] As part of a complaint settlement with EPA in November 2010, APS agreed to retire 3 units and purchase and retrofit 2 others at the Four Corners plant. The agreement will lead to the following reductions: plant capacity by 560 MW; NOx emissions by 36%; mercury emissions by 61%; particulate matter by 43%; CO_2 emissions by 30%; SO_2 emissions by 24%. It will also allow plant to remain compliant with state and federal environmental standards and reduce the carbon footprint in the region. Buying the 2 units for $294 million was "substantially less" than the other alternatives and saves customers "nearly $500 million over the next best alternative"

[6] Dominion is retiring 11 units due in part to cost of complying with the pending EPA regs (Salem Harbor, State Line, Chesapeake, Yorktown), and 4 units are being retired due to low natural gas prices. 3 units (Altavista, Hopewell, and Southhampton) are being converted to biomass and 2 to natural gas (Bremo Bluff, Yorktown). Some of these closures were included in a September 1, 2011, IRP filing.

[7] DTE Energy Services has agreed to covert 2 coal-fired facilities to biomass—the Port of Stockton Energy Facility and the Mount Poso Cogeneration Plant (co-owned with Red Hawk Energy)

[8] The Beckjord 6 unit, which is co-owned with AEP subsidiaries Columbus Southern and Dayton Power & Light, is included in the Duke total. As part of its overall coal-fleet transition strategy, Duke announced an agreement in 2008 to retire 800 MW of coal-fired power in exchange for building new 825 MW clean coal facility at Cliffside. It is not clear which plant retirements relate to this announcement, with the exception of Cliffside 1-4. Duke also agreed to make the new facility carbon neutral by 2018 by offsetting approximately 5½ million tons of CO_2/year) through the following means: depending more on nuclear power, further reducing power generated by coal-burning units, and using energy efficiency programs, carbon free tariffs and other "mitigation projects." Duke's permit for the new plant allows cost recovery. The new unit will: remove 99% of SO_2, 90% of NOx emissions and cut mercury emissions by 50%; be built to accommodate installation and operation of carbon control technologies; significantly minimize thermal impacts to the local river; and, generate wall board quality gypsum from the wet scrubber

[9] Edison International is closing the Will County units as part of mercury agreement with IL, and has also agreed to install SO_2 and NOx controls on all Midwest Gen plants.

[10] In August 2010, FirstEnergy announced that it would retire all or part of 2 coal-fired peaking plants (Lake Shore and Ashtabula)—and reduce operations at 2 other plants (Bay Shore and Eastlake)—due to decreased demand, plant age, etc. The units comprised 7% of total production in 2009. FE is retiring 2 other units (R.E. Burger) under a consent decree with EPA

[11] Retirement of Dean Mitchell units is part of a consent decree w/ EPA

[12] NRG retired Somerset Station 1 (74 MW, 1951 [2010]);

[13] As part of its overall coal-fleet transition strategy, Progress announced an agreement in December 2009 to retire 30% of its NC fleet (11 plants or approximately 1,500 MW of total capacity), replace some with natural gas plants, build new 950-MW natural gas plant at H.F. Lee plant site and build additional new 600-MW natural gas plant at Sutton Plant to replace coal generation being retired in order to maintain reliability. Progress' remaining NC plants are scrubbed (spent $2 billion installing state-of-the-art control on remaining coal generation). The retirement of 2 units in FL (Crystal River 1 & 2) depends on getting approval to move forward with a new nuclear plant.

[14] Southern (Georgia Power) is retiring the plants due primarily to the cost of complying with pending EPA regs. Southern has announced plans to convert the Mitchell plant to biomass (currently on hold), and that it may also retire Yates 6 & 7 (355 MW each, 1974) plants. On August 4, 2011, Southern filed comments that it expects to retire 4,000 MW of coal-fired generation—and repower approximately 4,700 MW of coal and oil-fired generation to natural gas and other fuels—as a result of compliance with the pending EPA regs, but has not specified which plants would be affected.

[15] Under agreement with state, TransAlta will install SNCRs on the units in 2013, invest $55 million on energy efficiency and clean energy technology development, and be allowed to sell power in-state from the plants under long-term contracts until they close.

[16] As part of settlement agreement with EPA (04/14/2011), TVA agreed to retire or idle the following coal plants: Johnsonville 1-10, John Sevier 3-4 and Widows Creek 1-6. In addition, TVA has agreed to spend $3-$5 billion in additional pollution control equipment for its remaining coal plants and $350 million on air pollution reduction and energy efficiency projects, as well as pay a $10 million civil penalty. Separately, TVA announced on 8/24/10 it would retire Shawnee 10 and John Sevier 1 & 2.

[17] As part of its overall coal-fleet transition strategy, Xcel announced a plan In August 2010 for its Colorado units only, in response to state law. Xcel will retire Cherokee 1-4 and Valmont, will spend $1.3 billion to convert coal-fired power plants to natural gas plants ($225 million savings compared to retrofitting the existing plants), and will retrofit 950 MW of coal-fired generation with modern emission control technologies. These actions will reduce Xcel's CO_2 emissions 20% by 2020. As part of 2007 IRP, Xcel agreed to add 1,000+ MW of renewable energy (which will allow it to meet the state RPS), to reduce demand by 694 MW through energy efficiency programs, and to retire Arapahoe 3 & 4 and Cameo 1 & 2. Xcel retirements also include 2 units operated by Northern States (Black Dog).

[18] Reflects coal plant retirements by the following power entities (state located in, owner, total MW, year built and [year of retirement] are shown in parenthesis): Hunlock 3 (PA, UGI Development Co., 45 MW; 1959 [2010]), Lakeside 6 & 7 (IL, City Water Light & Power, 76 MW, 1961, '65 [2010]), Muscatine 7 (IA, City of Muscatine, 21 MW, 1958 [2010]), James de Young 3 (MI, Holland Board of Public Works, 11 MW, 1951 [2012]), DOE Savannah River 1 & 2 (SC, U.S. DOE, 18 MW, 1952 [2013]), Quindaro 1 & 2 (KS, Kansas City Board of Public Utilities, 239 MW, 1965, '71 [2026]); Shelby Municipal 1-4 (OH, Shelby City, 37 MW total, 1948, '54, '68, '73 [2012]); Richard Gorsuch 1-4 (OH, American Municipal Power, 50 MW each, 1968 [2010]); Abbott Power Plant (IL, Univ. of Illinois, 49 MW total, 1959, '62, 2004 [2017]); JT Deely 1-2 (TX, CPS Energy, 871 MW, 1977-78 [2018]; Penn State West Campus Plant (PA, Penn State Univ., 20 MW, 1929 [2014]; UNC Chapel Hill Cogen 3 (NC, UNC, 28 MW, 1991 [2020]; Charter Street Hearting Plant 1 (WI, Univ. of Wisconsin, 10 MW, 1965 [2010]; Howard Down Station 7-10 (NJ, Vineland Municipal, 25 MW, 1970 [2010]; Utah Smelter Plant 1-3 (UT, Whitewater Valley 1-2 (VA, Richmond P&L, 94 MW total, 1955, '73 [2011]), Austin Northeast Station (TX, Austin Utilities, 32 MW, 1971 [2011]), Intl Paper (VA, 21 MW [2010])

Southwest Power Pool

HELPING OUR MEMBERS WORK TOGETHER
TO KEEP THE LIGHTS ON... TODAY AND IN THE FUTURE

Nicholas A. Brown, President & CEO

VIA ELECTRONIC SUBMISSION AND FIRST CLASS MAIL

July 19, 2011

Water Docket
U.S. Environmental Protection Agency
Mail Code: 4203M
1200 Pennsylvania Ave., NW
Washington, DC 20460

EPA Docket Center
U.S. Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: National Pollutant Discharge Elimination System – Cooling Water Intake Structures at Existing Facilities and Phase I Facilities; Docket ID No. EPA-HQ-OW-2008-0667

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; Docket ID Nos. EPA-HQ-OAR-2009-0234 and EPA-HQ-OAR-2011-0044

Dear Sir or Madam:

Southwest Power Pool, Inc. (SPP) appreciates the opportunity to comment and respectfully submits the attached report entitled, "Review of the Potential Reliability Impacts of Proposed EPA Regulations Impacting Generation in the SPP Footprint", dated July 19, 2011, in response to the U.S. Environmental Protection Agency's (EPA) proposed rules issued in the above-captioned dockets. SPP's preliminary assessment is based on a similar study performed by ERCOT which found comparable results. SPP's cursory analyses identify substantial reliability and cost impacts under credible scenarios with extremely conservative inputs and assumptions, particularly in light of the recently released EPA Cross-State Air Pollution Rule (CSAPR) which was not considered in this assessment.

SPP is an Arkansas non-profit corporation with its principal place of business at 415 N. McKinley, Suite 140, Little Rock, Arkansas 72205. Currently, SPP has 64 members serving approximately 15 million customers in a 370,000 square mile service territory covering all or part of the following states: Arkansas, Missouri, Kansas, Oklahoma, Louisiana, Mississippi, Nebraska, New Mexico and Texas. SPP's members include investor-owned utilities, municipals, cooperatives, state authorities, independent power producers, power marketers, independent transmission companies, as well as a contract participant. SPP is a Federal Energy Regulatory Commission (FERC) approved Regional Transmission Organization (RTO) and administers open-access transmission services across the SPP region under the terms of SPP's Open Access Transmission Tariff. As an RTO, SPP plans for and

functionally controls the transmission infrastructure committed to it and administers a competitive real-time wholesale electricity marketplace.

As outlined in the paragraphs that follow, SPP is concerned that the timeframe for implementation of the proposed rules may not provide generator operators sufficient time to bring their facilities into compliance, and they would be prohibited from operating until compliance activities can be completed. Should this occur, threats to the reliable operation of the grid will occur.

While SPP's initial assessment has focused on coal and gas units and select EPA rules similar to the ERCOT assessment, other pending requirements – carbon dioxide regulations for example – could have major impacts on future resource plans, system reliability, and economics. It is important to note this initial assessment did not consider impacts the reciprocating internal combustion engines (RICE) regulations may have on the potential loss of small units which many municipalities have relied upon. Elimination of those units could create local congestion challenges and require both transmission expansion and local programs to keep the lights on. Similarly, SPP did not consider the impact of Regional Haze requirements and the most recently published Cross-State Air Pollution Rule, which will exacerbate impacts on the system and SPP's ability to maintain adequate generating capability and reserves in the SPP footprint.

Based on this cursory assessment, which seems conservative given recent developments, it appears that EPA regulations could prevent reliable operation of the SPP RTO. Further impacts may occur, including failure to meet the requirements set forth by the North American Electric Reliability Corporation which were approved by FERC. SPP's findings and conclusions are not intended to exaggerate the system impacts, but rather to point out the possible types of adverse outcomes that may result in worst case scenarios as defined in this assessment.

SPP is concerned that the timeframe for compliance with the proposed rules, should they be approved, may be more aggressive than what can be achieved by the industry. Should this be the case it may adversely impact grid reliability due to the sudden required retirements and outages of units. At this point, SPP is aggressively monitoring several areas of its system where temporary mothballing of facilities appears possible and may lead to unstable, and hence unreliable, operating conditions. SPP encourages the EPA to work with generation owners to develop flexible compliance schedules to ensure equipment installation is completed in a timely, safe, reliable and cost-effective manner without an arbitrary deadline. Compliance plans developed in a collaborative manner may lessen the negative impact and/or prevent the unavailability of labor, parts, and other resources that may result from an arbitrary deadline. Such an approach would also ease concerns over grid instability caused by mass outages on generators to install the required equipment.

Furthermore, SPP is concerned that sufficient time will not be available to complete transmission construction activities necessary to mitigate the prohibited operation of certain generators and to complete the construction of replacement resources. As SPP becomes aware of units removed from service due to compliance with these new regulations, it will work diligently to plan and direct the transmission construction necessary to mitigate any resulting reliability issues on the SPP transmission system. However, as Transmission Customers within the region remove units from service and secure new replacement capacity, SPP is concerned as to the uncertainty of being able to identify the needed upgrades and place those new lines in service. SPP is responsible for overseeing the reliable operation of the SPP transmission system and is concerned that, in the event SPP is unable to construct the necessary lines in time and units are unable to operate due to these additional EPA restrictions, the SPP

transmission system may be placed in an unreliable operating state or one that necessitates firm load curtailments/customer outages.

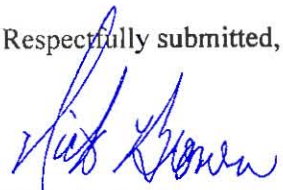
As a result of these concerns, SPP has two specific recommendations:

- First, SPP recommends that the EPA provide a gradual compliance schedule that allows the industry time to meet the proposed requirements in a reliable, safe and economic manner. Working with the industry to institute these changes will help preserve reliable system operations and also allow for a more gradual integration of the costs of compliance that could significantly mitigate reliability issues and sudden increases in consumer electricity prices.
- Second, SPP recommends that the EPA include in its rules a temporary waiver mechanism under which the affected generator owner, could seek an extension to allow for the continued operation of a generator while solutions, such as transmission expansion or demand response programs, can be assessed and approved by SPP and other transmission service providers.

Although these recommendations are based solely upon SPP's initial assessment, they appear to be prudent under any foreseeable conditions that may occur.

Please do not hesitate to contact me should you have questions or would like to request additional information.

Respectfully submitted,



Nicholas A. Brown
President & CEO
(501) 614-3213 • Fax: (501) 664-9553 • nbrown@spp.org

cc: SPP Board of Director, Members Committee, Strategic Planning Committee
State Regulators and Federal Legislators in AR, KS, LA, MO, MS, NE, NM, OK, and TX

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,[1] 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.[2] Accordingly, the Joint

[1] 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").

[2] The Joint RTO Commenters 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

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.

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

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[3] 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. [4]

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.[5] 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);[6]
- PJM – 90 days notice (PJM Tariff section 113.1 and 113.2);
- SPP – 45 days (SPP EIS Protocols Section 12)

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[3] *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").

[4] The Joint RTO Commenters utilize open stakeholder processes as a key feature of their planning processes.

[5] 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.

[6] *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 .

Moreover, FERC has indicated that due to the deregulated status of generation, the RTOs do not have authority to simply prohibit units from retiring.[7] 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.[8] 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.[9]

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[7] *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.").

[8] 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.

[9] The Proposed Rule recognized that local reliability impacts were not analyzed. *See* Proposed Rule at 25055.

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.[10] 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.[11]

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.[12] 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

[10] Proposed Rule at 25,054.
[11] Proposed Rule at 25,055.
[12] 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.

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.[13]

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[14] and Section 301(b) of the Department of Energy Organization Act[15] 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'

[13] 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.
[14] 16 U.S.C. § 824a(c).
[15] 42 U.S.C. § 7151(b)

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
tribuj@pjm.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

/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
rstalter@nyiso.com

/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

/s/ Matt Morais
Matt Morais
Assistant General Counsel
ERCOT (Electric Reliability Council of Texas)
7620 Metro Center Drive
Austin, Texas 78744
Mmorais@ercot.com

July 19,2011 CEO Statement Regarding EPA Cross-State Air Pollution Rule
H.B. "Trip" Doggett
President and Chief Executive Officer
Electric Reliability Council of Texas

As the independent system operator for the Texas electric grid, we fulfill specific responsibilities assigned by the Public Utility Commission of Texas and the Texas Legislature – primarily, responsibility for the reliability of electricity across the state's main interconnected power grid. We are a non-profit organization; we don't own generation or transmission; nor do we advocate for or against policy positions – except in cases where electric grid reliability may be affected. This is one of those cases where we believe it is our role to voice our concern that Texas could face a shortage of generation necessary to keep the lights on in Texas within a few years, if the EPA's Cross-State Rule is implemented as written.

ERCOT's May11 report to the Public Utility Commission on the impact of the proposed environmental regulations did not address the impact of SO2 restrictions on coal plants in ERCOT because these restrictions on Texas were not included as part of the EPA's earlier rule proposal. We have not had time to fully analyze the entire 1,323-page Cross-State Rule released July 7 or to communicate with the generation owners regarding what their intentions will be. However, initial implications are that the SO2 requirements for Texas added at the last stage of the rule development will have a significant impact on coal generation, which provided 40 percent of the electricity consumed in ERCOT in 2010.

Our concern is that the timing of the new requirements – effective Jan. 1, 2012 – is unreasonable because it does not allow enough time to implement operational responses to ensure reliability. We fear that many of the coal plants in ERCOT will be forced to limit or shut down operations in order to maintain compliance with the new rule, possibly leading to inadequate operating reserve margins with insufficient time to reliably retrofit existing generation or build new, replacement generation.

In the state's deregulated electric market, the generation owner bears the risk of investment and decides when and where to build new generation, and whether to retire or mothball existing generation, based on market conditions. ERCOT's role in the competitive market is to provide an outlook for future peak demand and how much generation will be needed to maintain long-term reliability of the electric grid. At this time, it is not clear that ERCOT operations has adequate tools to maintain long-term reliability in the face of the possible loss of a large amount of existing baseload generation in such a short period of time.

Craig A. Glazer
Vice President – Federal Government Policy
PJM Washington Office
PHONE (202) 423-4743 FAX (202) 393-7741
e-mail: glazec@pjm.com

PJM'S COMMENTS TO EPA PROPOSED HAZARDOUS AIR POLLUTANT RULE

The Environmental Protection Agency (EPA) has called for comments to its proposed rule establishing national emission standards for Hazardous Air Pollutants (NESHAP). In its comments filed today, PJM, the regional grid operator serving the Midwest and Mid-Atlantic region, raises concerns as to whether the EPA's analysis adequately captures the potential impact of the EPA rule on the need to ensure reliability of the grid in "load pockets" and other congested parts of the grid. PJM is charged under law with managing the reliability of the high voltage electric grid. PJM operates the high voltage power grid in all or parts of the states of Illinois, Indiana, Michigan, Ohio, Kentucky, Tennessee, West Virginia, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey and the District of Columbia, an area which includes 58 million people and represents 20% of the nation's Gross Domestic Product. In addition to its reliability responsibility, PJM is charged with the responsibility of planning for the infrastructure development of the transmission grid and in that role has studied the potential impact of the rule on system reliability.

When generating units are permanently shut down, grid planners such as PJM must find alternative resources (such as new transmission, demand response, or new generation) to reliably maintain electricity supply throughout the system. Although on a regional basis PJM does not expect a generation capacity shortfall, there may be local reliability issues that need to be addressed to ensure system improvements are in place before generation units retire. EPA's analysis did not sufficiently take into account these local reliability impacts.

In its comments, PJM proposes a targeted remedy to address the potential that insufficient time may exist for the deployment of alternative resources in response to the retirement of a plant that is otherwise critical for ensuring local reliability. Specifically, PJM proposes that EPA include in its Final Rule a "reliability safety valve" for specific units deemed "Reliability Critical Units," where an individual unit's shutdown would adversely impact local reliability.

The key points are:

- Generating plants which otherwise would shutdown but are deemed "Reliability Critical Units" by a Regional Transmission Organization (such as PJM) or Reliability Coordinator (in non RTO regions) would be eligible for a compliance extension for that period needed until alternative resources (either new transmission, generation or targeted demand response and energy efficiency programs) are in place to address the reliability issue created by the shutdown.

- Such Reliability Critical Generating Plants would qualify for the "safe harbor extension" (i.e. not face penalties for violation of the EPA rule) if they provide the Regional Transmission Organization with notice of their intended shutdown at least two years before the EPA compliance deadline. Currently, in PJM the rules only require generators to provide 90 days' notice. Advanced notice of plant owner's intention is critical to ensuring that there is adequate time for the development of alternative resources to meet the reliability need resulting from the potential plant shutdown.

The complete set of PJM's comments are posted at www.pjm.com. In addition to its own comments, PJM is joining with similar Regional Transmission Organizations in the Midwest (MISO), the Southeast (SPP), Texas (ERCOT) and New York (NY ISO), as a group in reiterating this need for a reliability safety valve to be incorporated into the Final EPA rule. Those comments are also posted at www.pjm.com.

For more information, contact Craig Glazer, PJM Vice President of Federal Government Policy at 202-423-4743 or by e-mail at glazec@pjm.com.

PJM Interconnection, founded in 1927, ensures the reliability of the high-voltage electric power system serving 58 million people in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM coordinates and directs the operation of the region's transmission grid, which includes 61,000 miles of transmission lines; administers a competitive wholesale electricity market; and plans regional transmission expansion improvements to maintain grid reliability and relieve congestion.