

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Commission Role Regarding Environmental Protection)
Agency’s Mercury and Air Toxics Standards) Docket No. AD12-1-000

**COMMENTS OF THE ELECTRIC UTILITY
TRADE ASSOCIATIONS**

In response to the January 30, 2012, Notice¹ of the Federal Energy Regulatory Commission (the Commission), the Edison Electric Institute (EEI), the American Public Power Association (APPA), the Large Public Power Council (LPPC), and the National Rural Electric Cooperative Association (NRECA) (Electric Utilities) submit the following comments in response to the Staff White Paper on the Commission’s Role Regarding Environmental Protection Agency’s Mercury and Air Toxics Standards (White Paper). The White Paper explains staff’s proposed position on how the Commission should advise the Environmental Protection Agency (EPA or Agency) on requests for extension of time to comply with the recently published final National Emissions Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units. *See 77 Fed. Reg.* 9304 (Feb. 16, 2012). The final standards require all coal- and oil-based electric generating units (EGUs) in the country to comply with Maximum Achievable Control Technology emissions limits set by the Agency within three years after the effective date of the standards unless this deadline is extended by environmental permitting authorities or EPA. The standards commonly are referred to as the “Utility MACT.”

¹ Notice of White Paper on the Commission Role Regarding Environmental Protection Agency's Mercury and Air Toxics Standards under AD12-1-00 available at: http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13992174

Under that rule, utilities seeking an additional year for installation of controls at an existing EGU may obtain a one-year extension from a state environmental permitting authority or EPA if necessary for the installation of controls. In cases where EGUs require a fourth year to come into compliance through the construction of transmission facilities (to remedy a reliability problem caused by the shutdown of a unit) or the construction of new EGUs at a different site, EPA has indicated that the permitting authorities have the “ultimate discretion” to provide a one-year extension. 77 *Fed. Reg.* at 9410. EPA has suggested that permitting authorities could allow units to continue to operate in compliance with the MACT rule if they demonstrate that such operation is needed to “avoid a serious risk to electric reliability.” *Id.* Units needing an additional fifth year to come into compliance would be eligible for an Administrative Order issued by EPA only if they need to continue to operate “to address a specific and documented reliability concern.” EPA Memorandum, “The Environmental Protection Agency’s Enforcement Response Policy for Use of Clean Air Act Section 113(a) Administration Orders In Relation to Electric Reliability and The Mercury and Air Toxics Standard” (EPA Enforcement Memo), p. 2. Such an Order appears to be intended to protect the utility from administrative fines and enforcement actions, but would treat the utility as being in noncompliance and would expose the utility to possible citizen suits.²

² Electric Utilities have major concerns with the current EPA process for providing an additional fifth year for achieving compliance with the Utility MACT. Major problems with EPA’s approach include the fact that the issuance of an Administrative Order under section 113(a) of the Clean Air Act—

- Does not alter or affect the underlying MACT compliance obligation (*e.g.*, affected EGUs remain in violation of the applicable MACT requirements);

The purpose of these comments is to address the process and criteria to be used to evaluate reliability impacts within the tight time constraints established by the Clean Air Act.

I. Electric Utilities' Members Have a Strong Interest in Obtaining a Sound Technical Assessment of the Reliability and Resource Adequacy Impacts of MACT Compliance Plans Early in the MACT Compliance Process.

EEI is the association of U.S. shareholder-owned electric companies. Our members serve 95 percent of the ultimate consumers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry.

APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States. More than 2,000 public power utilities provide over 15 percent of all kiloWatt-hour sales to ultimate customers, and do business in every state except Hawaii. Public power utilities own almost 10 percent of the nation's electric generating capacity but purchase nearly 70 percent of the power used to serve their ultimate consumers.

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- Does not necessarily shield affected EGUs from an EPA or state enforcement action; and
 - Provides no protection from the threat of citizen enforcement actions.

As a result, Electric Utilities continue to believe that units that are unable to install controls within four years should be granted extensions of time beyond four years through other mechanisms that provide greater regulatory certainty and do not place such units in noncompliance or in jeopardy of citizen suits and other challenges. However, since this issue is not within the Commission's jurisdiction, we do not address this issue further in these comments.

LPPC is an association of 24 of the nation's largest locally owned, not-for-profit electric power systems, whose members provide reliable, affordable electricity in 11 states and Puerto Rico served by public power. LPPC members own and operate approximately 34,000 circuit miles of transmission lines and over 75,000 megaWatts of generation, reflecting a balanced portfolio of renewable energy, fossil fuel, nuclear, hydropower, and other resources.

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to approximately 42 million people in 47 states or 12 percent of electric customers. KiloWatt-hour sales by rural electric cooperatives account for approximately 11 percent of all electric energy sold in the United States. NRECA members generate approximately 50 percent of the electric energy they sell and purchase the remaining 50 percent from non-NRECA members. The vast majority of NRECA members are not-for profit, consumer-owned cooperatives.

EPA projects that MACT compliance plans could affect more than 1400 coal- and oil- fueled electric generation units. Controls generally can only be installed in off-peak fall and spring periods, the compliance period is short, and most installations will likely take place at the end of the compliance period due to the lengthy lead time needed for the design, engineering, permitting, and fabrication of pollution control equipment. Therefore, localized transmission constraints could be created or exacerbated in certain areas if multiple utilities in a region plan to retrofit a significant number of EGUs simultaneously or in overlapping patterns of timing that could cause reliability or system adequacy problems. Accordingly, it is necessary to conduct a

sound technical assessment of the potential reliability and system adequacy impacts of utility compliance plans on both an individual utility basis and a consolidated regional or even cross-regional basis to assure that such plans do not unnecessarily harm, or threaten to harm, local or regional reliability.

Electric Utilities believe that it is essential for these analyses to be conducted early in the compliance period, as soon as individual utilities are able to formulate their initial compliance plans, in order for the implementation process to proceed in a reasonable, reliable and cost-effective manner. This process will have to be coordinated and reflect utility efforts to obtain extensions of time from environmental permitting authorities and EPA to install controls, repower units with natural gas, expand transmission capacity, or take other measures needed to come into compliance with the Utility MACT and other EPA rules. This is the best way to assure a reasonable, cost-effective and reliable transition. Early, firm, and clear approvals from environmental permitting authorities will be critical in helping utilities to plan and implement their compliance efforts in the most cost-effective manner possible under these difficult circumstances. This requires a clear, efficient and effective process to be in place quickly to evaluate the potential reliability and system adequacy impacts of individual Utility MACT compliance plans and their interactions with other compliance plans.

Concerns about the potential reliability impacts of complying with the Utility MACT rule were sufficiently notable that the President issued a Memorandum to the Administrator of EPA entitled “Flexible Implementation of the Mercury and Air Toxics Standards Rule” on the day the Administrator signed that rule. *76 Fed. Reg.* 80727-8 (Dec. 27, 2011). After directing EPA to

work with state and local environmental permitting authorities to make a fourth year “broadly available,” the President directed the Administrator to “promote early, coordinated and orderly planning and execution of the measures needed to implement the [MACT] Rule while maintaining the reliability of the electric power system and to promote predictability and reduce uncertainty while coordinating with FERC, DOE, state utility regulators, RTOs, NERC, and regional reliability organizations, other grid planning authorities, electric utilities and others as appropriate.” *Id.* In the Enforcement Memo, EPA stated that it “intends to consult, as necessary or appropriate on a case-by-case basis, with FERC and/or other entities with reliability expertise.” EPA Enforcement Memo, p. 7.

II. FERC Should Recommend the Process and, Working with NERC, the Regional Entities, Planning Authorities, including RTOs and the States, the Criteria that Should Be Applied in Evaluating and Addressing Potential Reliability and Resource Adequacy Impacts of the Utility MACT Rule.

Given the large number of entities identified in the President’s Memorandum and the EPA Enforcement Memo, it is essential to provide guidance as to the respective roles of all these organizations in evaluating and addressing potential reliability and resource adequacy impacts of the Utility MACT. Electric Utilities believe that the Commission, as the federal agency with the greatest responsibility for electric utility reliability, is the appropriate agency to help advise EPA and other stakeholders of the elements of an effective process and criteria to be applied in conducting the analyses of the potential reliability impacts of Utility MACT compliance decisions. We appreciate staff’s efforts, through its White Paper, to establish one possible framework that could be used to factor reliability concerns into requests for extensions of MACT compliance deadlines. Early attention to the issues at hand will help to expedite utility efforts to

comply in a rational and cost-effective manner and secure early, firm, and clear compliance extension approvals when needed.

The conduct of any planning studies addressing potential impacts to electric system reliability must be guided by the provisions of Section 215 of the Federal Power Act, FERC's own guidance regarding planning in Order No. 1000, and the traditional role of state and local authorities in establishing standards for resource adequacy, including renewable resources and related requirements. Section 215 directs FERC to oversee the operation of the designated Electric Reliability Organization (ERO), which is the North American Electric Reliability Corporation (NERC). Under Section 215, NERC establishes mandatory reliability standards, which are approved by the Commission, and a structure to implement and enforce those standards, subject to Commission oversight.

Under the NERC reliability regime, the responsibilities for planning are vested in designated "Planning Authorities," which are directed to run system reliability simulations and assessments to assure that the relevant bulk transmission systems are planned to meet specified performance standards, with sufficient lead time necessary to meet future system needs. These assessments must be conducted over a broad range of potential system contingencies as defined in the NERC Planning Standards as well as regional and local standards filed with FERC, usually involving the loss of significant generation or transmission resources, and are conducted to determine whether such contingencies point to additional investment in generation or transmission, or the reconfiguration of existing assets.

A Planning Authority can be a large RTO, such as PJM or MISO, or a much smaller entity. In Order No. 1000, FERC reaffirmed the role of the Planning Authorities in the planning process and established new requirements that are intended to lead to increased regional and interregional transmission planning efforts both inside and outside RTOs. Many of these new requirements, however, are in the early stages of being implemented, and are unlikely to be completed in the near future, when the Utility MACT reliability analyses will most likely be performed. However, the regional reliability entities and the Planning Authorities/RTOs that work with NERC to ensure regional reliability operate in concert with task forces and subcommittees designed to assure that these planning efforts are coordinated. They develop a common base case for each region, using a uniform set of underlying data and assumptions that then underlay each Planning Authority's more detailed model of its specific system.

Every Planning Authority assessment must seek to assure that the bulk electric system will maintain reliability under the full range of reasonable study parameters. In part, these parameters are set forth in the NERC Transmission Planning Standards. Planning requirements must also take into account resource requirements imposed on load serving entities by state and federal governments, including requirements to purchase renewable energy (which exist in 29 states and the District of Columbia), energy efficiency requirements and direct load control, other applicable resource and environmental requirements, integrated resource plans, and other measures that will affect the availability and location of both electric generation resources and electric demand. The planning effort must not only address the short-term reliability of the system but also look to the potential longer-term adequacy of resources to satisfy potential demand under the full range of reasonably foreseeable future scenarios and contingencies.

The eight regional reliability entities play a primary role in the NERC reliability assessment program. They conduct and coordinate studies and analyses among individual Planning Authorities to help produce NERC's long-term and seasonal reliability reports as part of NERC's Section 215 responsibilities. The regional reliability entities are well suited to evaluate and address the cumulative impacts of individual utility compliance decisions across a region through the combined Planning Authority/RTO assessments of impacts, as a supplement to state and local regulatory authority analyses.

State governments, through state utility regulatory commissions or political subdivisions with local jurisdiction, play an important independent role in assuring sound utility resource planning. For example, state institutions establish standards and criteria, such as resource adequacy standards or resource purchase requirements, and rely upon integrated resource planning to achieve the most cost-effective integration of resources. These functions are independent of the Section 215 process but are extremely important for the types of analysis which EPA and its permitting authorities would rely upon in determining the potential reliability impacts of MACT compliance activities.³ State utility regulatory commissions often work closely with planning authorities or rely upon studies conducted by these groups.

³ Section 215(i)(2) of the Federal Power Act is a savings provision which indicates that Section 215 does not authorize the Electric Reliability Organization (i.e., NERC) or the Commission "to set and enforce compliance with standards for adequacy... of electric facilities or services."

NERC establishes and FERC approves reliability standards, and FERC does conduct studies to oversee the operation of markets and other activities, but FERC itself is not directly tasked with the responsibility to conduct system planning to assure reliability or for other purposes. NERC issues long-term, seasonal and special reliability assessments each year, which, as indicated previously, are developed from information and analyses that are conducted by each of the eight regional reliability entities, working with the Planning Authorities/RTOs.

In light of this background, Electric Utilities urge the Commission, working in coordination with NERC, the regional reliability entities, state utility commissions and other local authorities, to perform each of the following functions:

1. Establish an efficient and effective reliability review process whereby EPA and state environmental permitting authorities will give significant deference to decisions of Planning Authorities/RTOs, regional reliability entities, NERC and state commissions/local authorities on the need for more time to complete Utility MACT compliance measures and the potential reliability and system adequacy impacts of such compliance measures. As indicated above, these are the organizations that have the direct experience and expertise to conduct reliability and resource adequacy planning studies.

2. Establish clear benchmarks for evaluating and addressing potential adverse reliability impacts that could result from the Utility MACT rule, whereby EPA, Planning Authorities/RTOs, regional reliability entities, NERC, state commissions and local authorities should apply a broad definition of reliability that includes Resource Adequacy,

rather than a narrow, short-term operationally based approach. In more utility-oriented technical terms, the concept of reliability as referred to in the President's Memorandum and the EPA documents should encompass both Reliable Operations (*i.e.*, short-term day-to-day and real-time operations time frames) and Resource Adequacy (planning the system to assure there is sufficient generation to serve demand under a wide variety of potential contingencies). The planning criteria look at more than the adequacy of the generation reserve margin. Other criteria include frequency response, voltage/reactive power requirements, firm load shedding and operational procedures.

The Resource Adequacy analysis must be forward-looking and recognize the possibility of a broad range of contingencies, including delays in permitting, approvals, and construction, the availability of fuel, the reduction in the capacity of units because of environmental retrofits, and the impact of equipment or skills shortages. A potential adverse reliability or resource adequacy impact that is identified under the full range of reasonably foreseeable planning contingencies provides a presumption that reliability could be harmed. FERC should recognize that the Planning Authorities must use their existing planning criteria and follow their existing processes to assess the full range of reliability impacts.

The Commission could provide a useful function by explaining these distinctions to EPA and other stakeholders. It could work with NERC, the regional reliability entities and Planning Authorities/RTOs to spell out in more detail the criteria and factors that distinguish a planning study regarding potential future resource adequacy impacts from reliability standards and policies governing reliable real-time operations. By providing such guidance early on, the

Commission can ensure greater consistency in the approaches taken by the various Planning Authorities on the one hand, and EPA and the environmental permitting agencies on the other hand. This would expedite the proper planning and permitting process by helping assure that EPA and the environmental permitting agencies have sufficient understanding of the process to align their determinations with reliable grid operations. We think this approach will be more constructive and expeditious than an approach in which the Commission would replicate individual reliability analyses or perform other independent analyses after the initial reliability assessments have been conducted by the various planning authorities.⁴

A key element of this guidance would address what constitutes a possible reliability or resource adequacy concern that would warrant an extension of the Utility MACT compliance timeline for one or more EGUs. It is essential to clarify that, in a planning context, reliability cannot be reduced to immediate violations of reliability standards. The goal of planning is to assure continued reliable operation of the electric grid over a broad range of reasonably foreseeable contingencies across appropriate time horizons of up to ten years. Planners must apply reasonable resource adequacy standards to ensure that system operators have sufficient generation and other resources and transmission network capacity to serve load in real time, without shedding customer load or jeopardizing reliable operation of the bulk power system except for situations in excess of planning criteria. The RTOs that operate centralized wholesale markets, the states, and relevant local authorities and entities address resource adequacy through

⁴ The Commission adopted a similar approach in Order No. 1000 when it noted that general principles are better able to address broader system planning concerns than individual adjudications. 136 FERC ¶ 61,051 at P 43 (2011).

their integrated resource plans or similar processes. Planning Authorities, regional reliability entities, and state public utility commissions have the combined expertise to review the cumulative impacts of the MACT compliance plans for a particular region, understand how long compliance efforts may take, and determine whether or to what extent there are significant problems caused by the timing and sequence of various retirement or retrofitting decisions. In most states, utility commissions also have the statutory obligation to assure that utility activities are just, reasonable, and prudent. FERC's guidance should recognize and promote these roles.

3. Facilitate a general framework process whereby Planning Authorities/RTOs, regional reliability entities, NERC, and state commissions are best able to perform their responsibilities and coordinate their activities. The Commission can best do this by encouraging all Planning Authorities/RTOs and regional reliability entities affected by a MACT compliance activity to conduct a special planning assessment if requested by an affected utility, and, if needed, collecting and posting for the public in one central location the results of Planning Authority Utility MACT planning studies, to help promote coordination within and between utilities and regions. These informational filings should be made available for public review (but not open for comment or intervention) to promote the sharing of the results of all analyses about the potential individual and cumulative reliability impacts of compliance actions so that all relevant parties have the information needed to address cumulative regional impacts.

Because the scope and nature of the roles of Planning Authorities, state commissions, and other parties identified in the President's Memorandum vary across the nation, we believe no single process can be described in advance to articulate when and how consolidated studies need to be

conducted. However, the posting of such information (combined with informal communications among affected interests and the Commission) will quickly help to identify when and where a more detailed analysis of cumulative impacts and seams issues is likely to be needed.

Reliability and resource adequacy determinations that have considered the factors specified should not be subject to further review, de novo or otherwise, by the Commission, but a utility should be able to specifically request the Commission to confirm whether such determinations have been conducted in accordance with applicable requirements. The Commission should support Planning Authority/RTO and state commission determinations. NERC, the regional reliability entities, and Planning Authorities/RTOs have the technical expertise to analyze reliability impacts within the states and regions, and state commissions and local authorities/entities certainly have the authority and responsibility to make resource adequacy decisions.

4. Help EPA and permitting authorities to better understand the utility planning and operational context, including the potential for delays in completion of new natural gas pipelines and electric transmission facilities and the role of integrated resource planning.

The Commission should share with EPA the Commission's own experiences with the process of siting and permitting both electric transmission facilities and natural gas pipelines. Because such projects are likely to be necessary preconditions to some utility compliance plans, such information will be important in helping EPA and state permitting authorities evaluate the reasonableness of projections from utilities, Planning Authorities, and states as to potential contingency events.

5. Work with EPA and state permitting agencies to publish on a timely basis a public record of which units receive compliance extension of time and which requests for more time were rejected. It would be very useful to have this information in one place. This information may prove critically important for accurate near-term seasonal assessments of potential energy and capacity shortages and accommodate outage coordination while maintaining reliability within the regions as MACT compliance implementation progresses.

III. Conclusion

Electric Utilities appreciate the opportunity to submit these comments and urge FERC to implement the measures that we recommend to help clarify and improve the processes that EPA will rely upon to receive information about the potential reliability impacts of Utility MACT compliance plans.

Respectfully submitted,

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