

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

June 12, 2014

The Honorable Mary Landrieu
Chair
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Chair Landrieu:

Attached is my response to the supplemental questions for the record posed by Ranking Member Murkowski, including a copy of the requested interagency staff document. Please let me know if I can be of further assistance.

Sincerely,



Cheryl A. LaFleur
Acting Chairman

Attachment

Question 1. As a follow up to my question 1 (previously submitted), please provide a copy of the “staff document” that you referred to in your answers for the record of the hearing with respect to the interactions between EPA, FERC and DOE.

- a. What EPA rules are covered by the “staff document”?

Answer: The staff document is attached to this response. The primary (though not exclusive) focus of this document, and of the three agencies’ joint efforts, is on issues related to the implementation of the Mercury and Air Toxics Standards (MATS) rule because MATS has been finalized and establishes source-specific requirements that must be achieved within well-defined time frames. I believe that the process followed for MATS is a good model for cooperation on other new environmental requirements as they are implemented. However, because there are no source-specific requirements under the 111(d) proposal, the tools to resolve any potential reliability issues are likely different than under the MATS rule.

- b. Please state what you know about the negotiations/discussions between FERC and EPA about the appropriate role of FERC and NERC in the EPA’s consideration of the potential reliability impacts of EPA’s proposed Clean Air Act regulations affecting existing coal power plants.

Answer: Administrator McCarthy and I have discussed and agree on the need for FERC to play a role in ensuring that reliability is sustained as new environmental rules are implemented. The agencies have maintained a good working relationship since the staff document was developed, and my understanding is that EPA also has engaged in extensive outreach with many interested parties in recent months, including State regulators, affected utilities and others.

- c. What is or was your position on the appropriate role for FERC and NERC in the EPA’s consideration of the potential reliability impacts of its proposed Clean Air Act regulations affecting existing coal plants?

Answer: As noted above, I believe FERC has an important role to play in ensuring that reliability is sustained as new environmental rules are implemented. One component of this work is FERC’s oversight of NERC, which conducts reliability assessments, among other activities. In fact, NERC’s role in ensuring reliability as the generation resource mix changes was a focus of discussion during our Reliability Technical Conference on June 10.

EPA-DOE-FERC Coordination to Monitor and Respond to Issues Related to Implementation of EPA Power Sector Regulations

This document describes how the U.S. Environmental Protection Agency (EPA), the U.S. Department of Energy (DOE), and the Federal Energy Regulatory Commission (FERC) are: (1) monitoring, within their respective jurisdictions, the progress of electric grid planners and operators and electricity generation owner/operators in responding to certain EPA regulations affecting the electric power sector, with an emphasis on potential electric reliability effects; and (2) ensuring coordination, as appropriate, in the use of available tools to address any such issues should they arise. The primary (though not exclusive) focus of this document, and of the three agencies' current joint efforts, is on issues related to the implementation of the Mercury and Air Toxics Standards (MATS) rule, because MATS has been finalized and establishes source-specific requirements that must be achieved within well-defined time frames. Although this document highlights important current and planned activities, it is expected that these activities will continue to evolve and develop over time. Additionally, this document only highlights coordinated activities, and does not address every action taken by the agencies individually.

Background:

On December 16, 2011, EPA finalized the MATS rule, which sets standards to control emissions of toxic air pollutants from power plants. On December 21, 2011, the President issued a Memorandum entitled "Flexible Implementation of the Mercury and Air Toxics Standards Rule" to ensure that implementation of the MATS rule proceed in a manner that does not undermine the power sector's ability to maintain electric reliability.¹ The Memorandum directs EPA to promote early, coordinated, and orderly planning and execution of the measures needed to implement the MATS rule while utilities and relevant authorities maintain the reliability of the electric power system. Further, it provides that this process should be designed to "promote predictability and reduce uncertainty," and should include engagement and coordination with the DOE, FERC and a broad array of non-federal stakeholders.

On July 6, 2011, the EPA signed the final Cross State Air Pollution Rule (CSAPR), which addressed SO₂ and NO_x emissions from power plants in the eastern United States that contribute to ozone or fine particle pollution in downwind states. On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued an opinion that would vacate the CSAPR, and on January 24, 2013 the court denied the EPA's petition for rehearing and rehearing en banc of this decision. The EPA also has proposed, but has not yet finalized, two other rules affecting power plants. On March 28, 2011, EPA signed a proposed rule addressing cooling water intake structures at existing power plants and manufacturing facilities under section 316(b) of the Clean Water Act; this rule is expected to be finalized in June 2013. In addition, on June 21, 2010, EPA issued a

¹ 76 Fed. Reg. 80,727 (Dec. 27, 2011).

proposed rule addressing disposal of coal combustion residuals from power plants under the Resource Conservation and Recovery Act.

Monitoring progress

EPA, DOE and FERC meet regularly with key stakeholders who play a role in the maintenance of the reliability of the electric power system and the implementation of relevant EPA regulations. These meetings have included a range of activities, depending on the relevant agency and stakeholder, including outreach and education, information gathering, and provision of technical assistance. Key stakeholders with which the agencies meet regularly in this area include, but are not limited to:

- Regional Transmission Organizations (RTOs) in key regions affected by EPA regulations;
- Planning Authorities in the Southeast;
- The North American Electric Reliability Corporation (NERC) and affiliated regional reliability entities in key regions affected by EPA regulations; and
- Utility trade associations and key generation owners with fleets affected by EPA regulations.

Steps the agencies have implemented to regularize their coordination with regard to ongoing monitoring and information-sharing activities include the following:

1. EPA, DOE and FERC will continue to meet regularly to share relevant new information on these issues and to discuss ongoing coordination, monitoring and outreach activities.
2. Each agency has established an internal team or working group that focuses on these issues and identified key staffers that can be contacted should issues arise between regular interagency meetings.
3. Recognizing the unique role that RTOs and other planning authorities play in identifying and resolving potential reliability issues, the agencies have established monthly joint meetings between the three agencies and the RTOs that are most affected by EPA regulations including: PJM, MISO, SPP, and ERCOT. The three agencies will conduct less frequent joint meetings with the other RTOs and planning authorities as appropriate.
4. In the Southeast, the principal region not covered by an RTO that is significantly affected by EPA's recently promulgated power sector regulations, the agencies will conduct regular meetings with SERC Reliability Corporation, the key regional reliability organization. In coordination with SERC, the agencies have initiated a process to establish periodic engagement with key planning authorities in the region.

5. The three agencies will continue to coordinate engagement with the North American Electric Reliability Corporation (NERC) and, as appropriate, regional reliability entities in key regions affected by EPA regulations.
6. FERC and the National Association of Regulatory Utility Commissioners will continue to convene a Forum on Reliability and the Environment to explore reliability issues stemming from new and pending environmental rules for the power sector. EPA and DOE have been invited speakers at the Forum meetings.

Tools to resolve potential issues

Each agency also has agency-specific authority to respond to potential reliability issues that may arise in connection with implementation of EPA's power sector rules.

Section 112(i)(3)(B) of the Clean Air Act confers on permitting authorities (generally States) the authority to grant an additional year to comply with MATS – beyond the otherwise applicable three-year deadline – where necessary for the installation of controls. In the preamble to the final MATS rule, EPA indicated that such extensions should be broadly available and provided guidance on a broad range of scenarios in which extensions may be granted. These include, but are not limited to, scenarios in which an electric generating unit needs to continue to operate in order to avoid a threat to electric reliability. EPA has reached out to State permitting authorities to ensure that they understand their discretion to use this flexibility and will continue to work with them to support the broad availability of such extensions.

Concurrently with the announcement of the final MATS rule, EPA announced that it is providing a clear pathway for units that are shown to be critical for electric reliability to obtain a schedule to achieve compliance with the rule within up to one additional year beyond the otherwise applicable compliance date (including any extension under Clean Air Act Section 112(i)(3)(B)). This pathway is set forth in a December 16, 2011, policy memorandum from EPA's Office of Enforcement and Compliance Assurance, which describes EPA's intended use of its Administrative Order (AO) authority under section 113(a) of the Clean Air Act in specified circumstances.² The policy memorandum directs any owner/operator that requests an AO as contemplated by the memorandum to submit a copy of its request to FERC when it submits the request to EPA. EPA intends, as appropriate, to consult with FERC with regard to assessment of claims that the relevant unit is critical to maintain electricity reliability and may also consult with other entities with expertise related to reliability, such as DOE.

² EPA Memorandum, December 16, 2011. "The Environmental Protection Agency's Enforcement Response Policy For Use of Clean Air Act Section 113(a) Administrative Orders in Relation To Electric Reliability and the Mercury and Air Toxics Standard" <http://www.epa.gov/compliance/resources/policies/civil/erp/mats-erp.pdf>

On May 17, 2012, FERC issued a policy statement describing how it will implement its consultation role in connection with the OECA policy memorandum concerning MATS.³ Under the FERC policy statement, generators will submit to FERC as informational filings copies of their requests to EPA for extra time for compliance. FERC's Office of Electric Reliability will lead the review of the filings under the Commission's general investigative authority; the reviews will examine whether compliance with EPA's rule could result in a violation of a FERC-approved reliability standard or other issues within FERC's jurisdiction. There are no specifically required analyses to show that operation of a generating unit beyond the compliance date is critical to maintain reliability, though informational filings should provide the types of data used by the Commission to examine potential violations of its mandatory reliability standards, such as system planning and operations studies, system restoration studies or plans, operating procedures and mitigation plans. The Commission will vote on its comments before providing them to EPA. Further, the FERC policy statement made clear that FERC staff will be available to communicate with the EPA on any reliability-related issues to aid the EPA in its consideration of these issues.

DOE will continue to support both EPA and FERC as each agency implements its role in relation to EPA's MATS enforcement policy memorandum and FERC's policy statement. DOE is poised to provide technical assistance as needed. In the context of EPA's MATS policy memorandum and the Presidential Memorandum described above, DOE will continue to engage and coordinate with EPA, FERC and other stakeholders, as appropriate, to mitigate any potential local reliability issues that may arise.

EPA, FERC and DOE will continue to meet regularly to discuss coordination of the three agencies' activities in this area and will continue to reach out to utilities, RTOs, PUCs and other relevant stakeholders to ensure that they understand the agencies' processes under the EPA policy memorandum and the FERC policy statement, respectively.

Finally, the three agencies will, as relevant, continue to coordinate and develop appropriate procedures to implement other potential mechanisms to address potential reliability issues, such as DOE's emergency order authority under Section 202(c) of the Federal Power Act.

³ FERC. May 17, 2012, "Policy Statement on the Commission's Role Regarding the Environmental Protection Agency's Mercury and Air Toxics Standards", <http://www.ferc.gov/whats-new/comm-meet/2012/051712/E-5.pdf>