

FEDERAL ENERGY REGULATORY COMMISSION

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OFFICE OF THE COMMISSIONER

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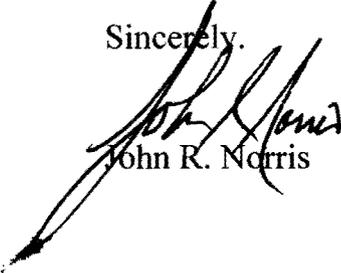
The Honorable Lisa A. Murkowski
United States Senate
Washington, DC 20510

Dear Senator Murkowski:

Thank you for your letter of September 19 concerning the potential reliability impacts of the Environmental Protection Agency (EPA) rulemaking initiatives. Please find enclosed my responses to your questions for the Commission.

In addition to my written responses to your questions, I have also contacted your staff to request a meeting, together with Commissioner LaFleur, to further discuss these issues. I would very much appreciate the opportunity to meet with you and/or your staff in person to discuss your concerns. Thank you very much.

Sincerely,



John R. Norris

cc: Patrick McCormick
McKie Campbell
Colin Hayes
Kellie Donnelly

Questions

Please provide detailed answers to the following questions:

1. Will EPA's rulemaking agenda, as described in my previous correspondence, degrade reliability in any region, sub-region or electric control area of the United States? In addition to answering this question, please state or explain:
 - a. the basis for this determination;
 - b. your degree of confidence in this determination;
 - c. the regions, sub-regions, or electric control areas that will be affected, with a particular focus on transmission "pockets" and cities where generating capacity is at risk;
 - d. the impacts on system stability or system recovery in the aftermath of wide scale forced outages (e.g., the recent regional outage in Arizona, Southern California, and Northern Mexico);
 - e. the impact on reliability of any change in the balance among different types of generation, particularly during and in the aftermath of forced outages and periods of peak demand; and
 - f. the actions that the Commission is undertaking to understand and address these effects?

Answer: I agree with the Chairman that there is currently no basis on which to formulate an accurate and comprehensive answer to your questions. To predict what plants can be expected to retire with any kind of accuracy (and thus target any potential pockets where local reliability issues might arise), first, EPA needs to finalize its regulations. Then, we would need information regarding the economics of each potentially impacted plant, including each plant's costs of operation (including cost to comply with EPA's requirements) and expected revenues. However, much of this information is confidential and competitively sensitive information that may not be appropriate for government agencies to compel from businesses operating in a competitive marketplace and could in fact be harmful to those markets.

Based on the available information that I have reviewed to date on EPA's proposed and final regulations, I am sufficiently satisfied that the overall reliability of the electric grid can be adequately maintained as compliance with EPA's regulations is achieved. However, given the importance of a reliable electric grid to our economy and the safety of our citizens and the number of variable factors and competing choices that impact grid reliability, I do not believe that we can ever claim 100 percent satisfaction that any of the numerous factors impacting the public and private entities engaged in our electric system will not at some time impact reliability. As EPA finalizes its proposed rules (and refines its final rules, if necessary), generation owners will make their own business decisions based on their own individual circumstances as to whether to continue to operate. At

that time, any potential local reliability concerns resulting from a potential retirement can be adequately studied and addressed using the tools available to industry and regulators. Thus, it is key that we remain vigilant in monitoring grid reliability as general owners make their business decisions, and that we have appropriate tools available to address reliability concerns if and when they arise.

I base my views first on the extensive analyses that have been performed to date by a wide variety of entities to attempt to assess the reliability impact of EPA's proposed and final regulations. While the results of these studies vary greatly, given that they employ widely varying assumptions regarding the ultimate requirements EPA may adopt, the costs of compliance, and the relative economics of different types of generation, none of the studies are unreasonable, and none of them raise broad reliability concerns. These kinds of studies are continuing to be performed, and I will continue to monitor their results.

Second, to the extent reliability concerns are revealed as studies continue, I believe there are numerous tools available to manage electric reliability as compliance with EPA's regulations is achieved. FERC, state public utility commissions, EPA, and the Department of Energy (DOE) all have important tools that can be utilized. As I described in my September 14, 2011 testimony before the House Energy and Commerce Committee Subcommittee on Energy and Power, FERC's tools include its oversight of competitive wholesale power markets, and the local and regional planning processes developed pursuant to Order Nos. 890 and 1000. State public utility commission tools include their primary oversight of generation, and of Integrated Resource Planning processes and other measures to ensure that their utilities are adequately planning to meet environmental requirements. EPA's tools include existing flexibility under the Clean Air Act and Clean Water Act to extend compliance timeframes where necessary, and the ability to utilize consent decrees and other enforcement discretion to address circumstances where reliability may be impacted. DOE also has important authority under section 202(c) of the Federal Power Act to order a plant to continue operating in the unlikely event of a reliability emergency precipitated by compliance with environmental rules.

2. In your view, what is the extent of the Commission's responsibility to ensure the reliability and security of the nation's bulk power system? In this regard, please describe that responsibility and what actions by the Commission it may entail.

Answer: FERC has several important statutory roles and responsibilities with respect to reliability that I take very seriously. FERC's primary responsibility, under section 215 of the Federal Power Act, is to establish mandatory and enforceable reliability standards for the bulk power system. 16 U.S.C. § 824o. Under the paradigm established by Congress in section 215, those standards are developed by the Electric Reliability

Organization, which has established processes for developing the standards through industry stakeholder groups. FERC does not write the standards itself, but instead either approves the standards as “just, reasonable, not unduly discriminatory, and in the public interest,” or remands the standards to the Electric Reliability Organization for further consideration if it cannot make such a finding. See 16 U.S.C. §§ 824o(d)(2) and (d)(4). FERC may order the Electric Reliability Organization to develop and submit a new or modified standard to address a specific reliability matter, but cannot write a standard itself to address that matter. 16 U.S.C. § 824o(d)(5). In section 215, Congress also explicitly provided that neither FERC nor the Electric Reliability Organization is empowered to order construction of new generation or transmission facilities, or to enforce compliance with resource adequacy or safety standards. 16 U.S.C. § 824o(i)(2).

In addition to section 215 of the Federal Power Act, section 207 of the Federal Power Act provides FERC with limited authority to address reliability issues where it finds, in response to a complaint by a State commission, that “any interstate service of any public utility is inadequate or insufficient.” 16 U.S.C. § 824f. Here again, in determining the “proper, adequate, or sufficient service to be furnished” under section 207, Congress prohibited FERC from “compel[ing] the enlargement of generating facilities”.

Finally, FERC must take bulk power system reliability into account when fulfilling its primary mission of ensuring “just and reasonable” rates under sections 205 and 206 of the Federal Power Act. When weighing whether the rates, terms and conditions of service filed with FERC under these sections are “just and reasonable,” the Commission often takes into account whether those rates, terms and conditions will promote adequate reliability of service to consumers.

3. What process will the Commission undertake to assess the impact on reliability of EPA's rulemaking agenda? With respect to this process, please describe:
 - a. the scope of the process;
 - b. the projected timeline for any contemplated activities;
 - c. the division of responsibility between the Commission, NERC, and any other entity;
 - d. any contemplated studies or projections; and
 - c. the agencies and officials participating.

Answer: As part of the recently announced November technical conference, it is my expectation that the Commission will review existing processes that are designed to assess the reliability impact of EPA's rules, once they are finalized. A primary goal of this review will be to engage with the entities responsible for such assessments to explore opportunities for greater coordination. The Commission can also use forums like the November technical conference to assess the tools available to manage compliance with

the EPA's rules (some of which I note above in response to question one) and consider whether improvements are needed to any of the tools within our jurisdiction.

4. As a matter of public policy, do you believe that federal regulations should be generally applicable?

Answer: I do believe that, as a matter of public policy, federal regulations should be generally applicable. However, I also recognize that there are times when it is not appropriate to apply a federal regulation in every instance or to apply it in the same way in every instance. With regard to the EPA regulations discussed here, I believe that those regulations should be generally applied. However, I also believe that there may be instances in which local reliability concerns arise and the EPA regulations can and should be applied in a common sense way – e.g., by granting case-specific waivers or compliance flexibility until all parties can work together to ensure that the entity in question can meet the EPA regulations in a reliable, safe manner. As I note above, my understanding is that the Clean Air Act and Clean Water Act give EPA the flexibility to work with individual entities on a case-by-case basis where necessary.

5. Do you intend to involve the Commission in the EPA's rulemaking process sufficiently to ensure that EPA's rules, in fact, can be generally applicable without a threat to reliability?

Answer: My understanding is that Commission staff, under the direction of the Chairman, periodically met with EPA to discuss the reliability implications of the EPA rules. In addition, over the past year, I met with EPA Assistant Administrator Gina McCarthy to discuss the status and content of the proposed EPA rules. Based upon my interactions with Ms. McCarthy, the public statements of other EPA officials, and recent EPA proposals to refine some of its requirements, I have no reason to believe that the EPA is not considering the potential cumulative impact of its rules in its decision-making process and that it will not provide targeted compliance flexibility where necessary to maintain reliability.

6. If, *de facto*, EPA's rules are less than generally applicable because they require significant exceptions and waivers to meet reliability requirements, please explain the process you believe should apply. Please describe any proposals for such a waiver or exception process that that might serve as a "safety valve" that you may have under review, or that you believe may be under review by EPA or any other Executive Agency, for permitting certain power plants to operate under the EPA rules until mitigation measures are put in place to safeguard reliability considerations. Please detail the elements of such a process for providing

flexibility or targeted and discrete exceptions or waivers. If such a process would include the use of consent decrees entered in judicial proceedings, please explain how such a process might operate.

Answer: I am not aware of any specific proposals for a waiver or exception process that are under review by the Commission or our staff. As I note above, however, it is my understanding that there are processes already available under the Clean Air Act and Clean Water Act to address individual circumstances where compliance flexibility may be necessary to ensure that a specific reliability issue is managed. EPA is in the best position to describe the elements of those processes. I also understand that several of the Regional Transmission Organization/Independent System Operators (RTO/ISOs) (including Electric Reliability Council of Texas, Midwest Independent Transmission System Operator, Inc., New York Independent System Operator, PJM Interconnection, LLC, and Southwest Power Pool) have submitted a proposal to EPA that would provide for additional, targeted compliance flexibility in a situation where the RTO/ISO determines that a specific generating unit seeking to retire is needed for reliability, and where additional time is needed to implement measures that would mitigate reliability concerns and allow the unit to retire. I think this proposal has great merit, and hope that EPA will strongly consider it. The proposal is currently before EPA, and EPA will determine whether to adopt the proposal and how it would operate in practice.

7. Please provide any estimate that you or any Commissioner or Commission employee may have developed with respect to the number of generating units that could qualify for such flexibility or targeted and discrete exceptions or waivers.

Answer: I have not developed any estimate nor am I aware that any Commissioner or Commission employee has developed such an estimate.

8. If you expect that completing a reliability assessment of the cumulative impact of EPA's rulemaking agenda in general - or of the Utility MACT or Cross State Air Pollution rules in particular - will require more than six months, please explain in detail the objectives of the assessment, its methodology, and the time necessary to complete each step. In addition, please explain why it would be infeasible to release an assessment within six months' time.

Answer: I believe that the Commission could perform a macro-level analysis of the cumulative impact of the EPA regulations within six months of the rules being finalized. However, I do not think an additional macro-level analysis would be particularly probative. My understanding is that reliability concerns will largely be local and related to specific generator retirements, which cannot be identified until the EPA rules are finalized and utilities and other generation owners are able to make their own

assessments of the continued economic viability of their assets. Once the EPA rules are final and generation owners have the opportunity to make their own business decisions as to whether to continue to operate, any potential local reliability concerns can be adequately studied and addressed using the tools available to industry and regulators.

9. If the Commission is not undertaking such a process, and has no plans to do so, please either:
- affirm that EPA's rulemaking agenda will not materially degrade reliability in any location within the United States; or,
 - explain how the Commission will carry out its statutory obligations with respect to reliability and security in the absence of information regarding expected material degradations to reliability.

Answer: As I discuss above, while I do not believe that policymakers, regulators, or the industry can ever guarantee reliability outcomes with 100 percent certainty, I am sufficiently satisfied, based on the information available to date and the tools available, that the reliability of the electric grid can be adequately maintained as compliance with EPA's regulations is achieved. The Commission can best carry out our statutory obligations and responsibilities by continuing to vigilantly monitor grid reliability during the course of achieving compliance with EPA's regulations, and by utilizing our tools and authorities to help manage the implementation of the rules in the most efficient way possible. To the extent changes are needed to the tools that are within our authority, the Commission can and should act to address them.