

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C. 20426

OFFICE OF THE COMMISSIONER

January 12, 2015

Honorable Fred Upton
Chairman
Committee on Energy &
Commerce
U.S. House of Representatives
Washington DC 20515

Honorable Ed Whitfield
Chairman
Subcommittee on Energy &
Power
U.S. House of Representatives
Washington, DC 20515

Honorable Lisa Murkowski
Chair
Committee on Energy &
Natural Resources
U.S. Senate
Washington, DC 20510

Dear Chair Murkowski, Chairman Upton, and Chairman Whitfield:

Thank you for your letter of December 22, 2014 regarding communications between the Commission and the Environmental Protection Agency ("EPA") regarding the EPA's Clean Power Plan. My responses to your questions are set forth below.

1. EPA officials have asserted that staff at FERC actively participated in the development of the Clean Power Plan proposal. Are you aware of, or have you or your staff personally participated in, any meetings or conversations that would support EPA's view of FERC's participation?

Answer: EPA issued its Clean Power Plan proposal in June 2014. At that time, I was the Director of the FERC's Office of Enforcement. In my duties as Director of the Office of Enforcement, neither I, nor my staff, had any consultation with EPA regarding the proposal. As to FERC's general participation, I am not aware of any meetings or conversations beyond those listed in Chairman LaFleur's December 3, 2014 letter to Chairman Upton.

2. Given the December 3 correspondence and the attachments, what, if anything, can you tell us about the nature and subject matter of any or all of the listed meetings?

Answer: I did not participate in the meetings and conversations listed in the Chairman's December 3, 2014 letter.

3. Based on the December 3 correspondence, what conclusions, if any, do you draw concerning the quality and impact of FERC's interaction with EPA as it relates to ensuring that EPA rules do not unduly burden electric reliability?

Answer: I was not personally involved with the meetings and conversations listed in the Chairman's December 3, 2014 letter with respect to the EPA's Clean Power Plan. That being said, in May 2012 the Commission issued a Policy Statement in which it explained how it will provide technical advice to the EPA on requests for a Mercury and Air Toxics Standards ("MATS") administrative order. I understand that on a number of occasions FERC staff have discussed MATS-related issues with the EPA and regional transmission organizations ("RTOs")

November 20, 2014, FERC issued comments in which it concluded that a “unit [that sought an administrative order] is needed as requested . . . to maintain electric reliability.” I also understand that in November 2013 staff from the Department of Energy (“DOE”), EPA, and FERC jointly developed a coordination memorandum to identify how the agencies would work together to address the potential effect of EPA regulations on reliability. In August 2014, the Government Accountability Office said that “DOE, EPA, and FERC have taken initial steps to monitor industry progress responding to EPA regulations including jointly conducting regular meetings with key industry stakeholders.”

4. To your knowledge, was FERC staff permitted access to EPA documents or proposals or otherwise afforded an opportunity for considered interaction on the substance of the Clean Power Plan proposal?

Answer: I do not have personal knowledge of the extent to which EPA permitted FERC staff to access EPA documents or proposals regarding the substance of the Clean Power Plan proposal.

5. Other than through the announced technical conferences, do you yourself presently anticipate future involvement with EPA before the Clean Power Plan rule or any other pending major EPA rulemaking that in your judgment is likely to bear on electric reliability is made final?

Answer: As you know, the Commission will hold a series of technical conferences in February and March to explore the potential implications of the Clean Power Plan on the reliability of the electric grid, infrastructure needs that may arise from state or regional compliance efforts, and on FERC-jurisdictional markets. The results of those technical conferences, along with continued analysis by FERC staff, will guide the Commission’s future involvement with the EPA regarding the Clean Power Plan proposal.

As a general matter, I believe the Commission can help maintain grid reliability through open communication and a strong working relationship with EPA, DOE, the states, the North American Electric Reliability Corporation (“NERC”), RTOs, ISOs, and industry.

6. At this time are you aware of any established or forthcoming plan by the EPA or the FERC staff to include you or your staff in substantive inter-agency interactions on these matters?

Answer: Other than the upcoming technical conferences, I am not presently aware of any established or forthcoming plans by EPA or FERC staff to include my staff or me in substantive inter-agency interactions regarding the Clean Power Plan. Of course, FERC will continue to be involved with MATS-related issues, both at the staff and Commission level, particularly when the EPA seeks FERC’s advice in evaluating a request for an administrative order.

7. Based upon your personal knowledge, in its interactions with EPA concerning proposed or final major EPA rules that bear on electric reliability, has FERC acted adequately to protect electric reliability? If your answer is yes, please identify the facts that support your view.

Answer: I have not personally participated in the interactions between FERC staff and EPA regarding the Clean Power Plan or other EPA rules that bear on electric reliability. That said, I understand that staff from FERC, DOE and EPA have developed a coordination memorandum outlining how the agencies would work together to address the potential reliability impacts of EPA regulations. To the end, as outlined in Chairman LaFleur's December 3, 2014 letter, FERC staff have met with EPA on a number of occasions regarding the Clean Power Plan and other EPA rules affecting the power industry. And the Commission recently responded to EPA's first formal request for assistance in connection with a reliability-related request for an extension of time to comply with the agency's MATS rule. Moreover, the Commission recently issued its supplemental notice regarding the technical conferences it will hold on the implications of compliance approaches to the Clean Power Plan. There will be a national overview technical conference and three regional conferences, which will focus on issues related to electric reliability, wholesale electric markets and operations, and energy infrastructure.

The reliability implications of the Clean Power Plan will largely arise from the compliance plans that will be developed by states or regions. As a result, good communication and planning by and among key stakeholders, including FERC, EPA, DOE, state officials, NERC, RTOs/ISOs, and industry will be critical. I believe the Commission's recently-announced technical conferences are an important step in fostering a meaningful discussion of those potential issues. The Commission will also continue to work with the National Association of Regulatory Utility Commissioners ("NARUC"), and two former NARUC Presidents are now members of the Commission.

Thank you for your inquiry. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Norm C. Bay" followed by a checkmark.

Norman C. Bay
Commissioner