UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Reliability Technical Conference	)	Docket No. AD12-1-000

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 November 9, 2011 Notice of Reliability Technical Conference Agenda of the Federal Energy Regulatory Commission ("FERC" or "Commission") in the above referenced proceeding, 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") (together, the "Joint RTO Commentors") submit these comments in the above-referenced proceeding.[1] The Joint RTO Commentors commend the Commission for its efforts in considering the potential electric system reliability impacts that may result from the implementation of the several Environmental Protection Agency ("EPA") rulemakings. While the Joint RTO Commentors take no position on the substantive merits of any EPA rulemaking, the issue of reliability is one of the core functions of ISOs/RTOs and therefore of the utmost concern to our organizations.

Due to the important and critical role the Joint RTO Commentors play in ensuring the reliable delivery of electricity, we urge the Commission to use its authority, resources, and influence to help ensure that the power industry has ample time and

[1] Individual RTOs and ISOs may be filing their own RTO-specific Post Technical Conference comments in addition to this joint submittal.

flexibility to comply with the EPA rule while maintaining the reliability of our nation's electric grid.

Accordingly, where possible, the Commission should work to ensure that EPA rules are implemented in a manner that mitigates the potential for negative system reliability impacts, whether related to transmission security or resource adequacy/reserve margin requirements.

To this end, the Joint RTO Commentors submitted comments and a draft proposal to EPA (the "Reliability Safety Valve Proposal") intended to mitigate negative system reliability impacts that may result from the MACT Rule.[2] Although the impacts of the MACT Rule can markedly differ by region, the Reliability Safety Valve Proposal provides a clear and transparent process that takes into account that some affected units (be they units which are retrofitting or retiring) can affect reliability (*i.e.,* either localized transmission security and/or resource adequacy/reserve margin requirements). The process would allow for unit-specific compliance flexibility which, under the Reliability Safety Valve Proposal, needs to be justified by the applicant and verified by the applicable Planning Authority, with respect to transmission, or the entity responsible for resource adequacy/reserve margins, as appropriate. We fully expect coordination between FERC, the states and EPA on these individual applications as both FERC and the states have key roles to play as defined by existing statutes.

[2] The Joint RTO Commentors' EPA comments and draft proposal are attached to these comments for the Commission's reference at Attachments A and B, respectively. The Joint RTO Commentors' comments and proposal focused on the MACT Rule. *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) ("MACT Rule") However, the principle of providing adequate implementation flexibility arguably applies to all EPA rules to the extent practicable.

Whether Additional Tools and Processes Are Necessary

The Joint RTO Commentors concur with the comments of various Commissioners and the Chairman as well as a number of witnesses that speed and transparency will be critical to an effective process. We also concur with the observations of EEI and others that new layers of review and approval would not be helpful given the magnitude of the task and the limited time companies face for compliance under the EPA rules and Clean Air Act statutory deadlines. The problem at hand may be the volume of requests not the processes to analyze them. The ISO/RTO Reliability Safety Valve proposal facilitates efficiency in the most effective and expeditious manner possible using existing Order No. 890-approved processes, or in the case of ERCOT, state approved tariffs, to the maximum extent possible.

In addition to the Joint RTO Commentors, numerous other entities have raised similar concerns related to the system impact of the EPA rules. Several alternative proposals as to how best manage and address potential reliability concerns have been put forth by different entities. These proposals range from EEI's proposal which is very similar to the Joint ISO/RTO proposal in most aspects, to new, more layered, approval processes that involve other entities moving beyond their existing statutory role.[3]

The Joint RTO Commentors urge the Commission, EPA and other relevant authorities to avoid formally establishing new approval processes that could slow the efficiency and transparency of any safety valve process. The regulatory tools needed to

[3] *See Panel IV, Written Remarks, Gerry Cauley, President and Chief Executive Officer North American Electric reliability Corporation,* Discussion on Multi-Jurisdictional Processes, Docket Nos. AD12-1, *et al.,* (filed Nov. 25, 2011).

identify reliability issues and solutions are already in place in FERC-approved, or in the case of ERCOT state-approved, tariffs. For example, this Commission already, by statute, plays a number of key roles: including approval of reliability must run ("RMR") agreements (and the underlying basis for such agreements), oversight of the planning processes pursuant to Order Nos. 890 and 1000 and oversight and enforcement authority over development and implementation of reliability standards. The states similarly already play a key role through their siting, certification and cost recovery processes pursuant to individual state laws. And NERC continues to play a key role under its existing authority to promulgate and enforce standards and provide "big picture" regional reliability assessments pursuant to Sections 215(d) and (g) of the Federal Power Act, 16 U.S.C. §824o(d) and (g).

Because there are existing processes that specifically address the requisite reliability determinations, there is no need to re-invent the wheel by creating additional layers of substantive input/analysis and/or review/approval steps as was suggested by NERC. In fact, if anything, additional approval processes could undermine the efficiency and effectiveness of the existing processes, both in terms of substantive results and timing, both of which are critical to the success of any compliance flexibility effort adopted by the EPA in its rules to respect electric system reliability. By relying on the existing ISO/RTO processes (and other relevant existing processes in non-ISO/RTO regions) any compliance flexibility procedures ultimately adopted by EPA will allow for the submission of the necessary technical justifications and support for compliance

extensions in the most substantive, procedurally expeditious, and cost-effective manner.[4]

In short, with respect to the issue of reliability assessments necessary to support compliance flexibility, there are adequate existing processes in place and the Commission and EPA should focus on utilizing those processes to the maximum extent possible.

Whether Strict Environmental Limitations Should Be Imposed Across-the-Board on Reliability Critical Units

The Joint RTO Commentors also wish to address the issue of whether the final EPA rule should mandate across-the-board restrictions on the run time of units otherwise granted relief under the Reliability Safety Valve Proposal. Although this clearly is more within EPA's authority than FERC's, the Commission should work to ensure that environmentally-based restrictions (on run time, for instance) be imposed on a case-by-case, rather than a one-size-fits-all, basis in order that the Reliability Safety Valve is implemented in the most reasonable and effective way possible. This issue has been addressed by certain market participants in comments in this proceeding.[5] In addition, it was discussed at the technical conference.[6]

[4] The detailed language to implement the Reliability Safety Valve Proposal which the Joint RTO Commentors presented to EPA did envision a role for FERC to certify that the reliability findings of the Planning Authorities in non-RTO regions. This extra layer was provided in response to concerns about the lack of independence and the anomaly of a Planning Authority having to certify that its affiliate's generator should continue to operate while its affiliate's competitor's generator is deemed not needed for reliability and therefore unable to obtain relief under the Reliability Safety Valve process. Whether such an additional layer is needed to avoid litigation of decisions in non-RTO regions is a decision ultimately for EPA, in consultation with FERC, to decide.

[5] *See, e.g.,* Prepared Testimony of Kathleen L. Barrón, Vice President, Federal Regulatory Affairs and Policy, Exelon Corporation, at 15, Docket Nos. AD12-1-000, RC11-6-000, and EL11-62 (not consolidated) (Nov. 25, 2011).

[6] Transcript of Reliability Technical Conference, Docket Nos. AD12-1-000, RC11-6-000, and EL11-62-000 (not consolidated), at 204-216; 242-243 (Nov. 29 & 30, 2011).

Positions on this issue vary significantly, ranging from limiting operation to only those periods when the unit is absolutely needed for reliability to very few , if any limits on the run times of such units. The fact is that this issue is not susceptible to a one size fits all approach. Rather, operational conditions placed on units pursuant to any compliance flexibility procedure should be determined on a case-by-case basis depending on the particular facts and circumstances. For example, units are going to have different operational postures. While some relevant units may run infrequently, others, needed for black start capability for instance, may be called on to run 7 x 24 until alternate arrangements can be made. Another example of potentially relevant differences is the emissions profile of different units, and the ability to alter that profile. There is no easy, uniform solution to this issue. Rather, this issue begs for a unit-specific analysis based on a transparent process, defined up front by the EPA. The Joint RTO Commentors supported this approach in their initial Comments to EPA and still believe it is the most reasonable way to assess operational conditions to units deemed eligible for compliance flexibility under a safety valve procedure.

The Joint RTO Commentors appreciate the opportunity to comment in response to the Technical Conference discussion of these important matters, and stand ready to assist the Commission. The Joint RTO Commentors urge the Commission use its authority, resources, and influence to help ensure that the electrical industry has ample time and flexibility to comply with the EPA rule while maintaining the reliability of our nation's electric grid. To this end, we ask the Commission to work with EPA and all other relevant authorities in developing a construct that supports achievement of the

environmental goals while simultaneously respecting electric system reliability through the most efficient and effective means.

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/ Mollie Lampi
Mollie Lampi
Assistant General Counsel
Ray Stalter
Director of Regulatory Affairs
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144
mlampi@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)
2705 West Lake Drive
Taylor, Texas 76574
Mmorais@ercot.com

Attachment A

BEFORE THE UNITED STATES
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	)	**EPA-HQ-OAR-2009-0234**
	)	**EPA-HQ-OAR-2011-0044**
	)	**FRL-9286-1**

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

Attachment B