

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

**Commission Role Regarding
Environmental Protection Agency's
Mercury and Air Toxics Standards**

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Docket No. AD12-1-000

COMMENTS OF THE ISO/RTO COUNCIL

I. Introduction

On December 16, 2011, the Environmental Protection Agency (EPA) issued the Mercury and Air Toxics Standards (“MATS”). EPA also issued an Enforcement Response Policy (“Enforcement Policy”) related to the MATS.¹ The Enforcement Policy outlines a process for using administrative orders (“AOs”) to provide certain generating units up to a year of operation in noncompliance with the MATS if they are needed to maintain the reliability of the electric grid.²

On January 30, 2012, FERC Staff issued a Staff White Paper (“White Paper”) that describes a process pursuant to which the Commission would provide input to EPA. Pursuant to the Federal Energy Regulatory Commission (“FERC” or “Commission”) Notice of White Paper issued on January 30, 2012 in the above-captioned proceeding, the ISO/RTO Council (“IRC”) hereby submits comments in response to the White Paper.³

¹ *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 (“MATS”) and 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 (“Enforcement Policy”).* The MATS and the Enforcement Policy can be found at: <http://www.epa.gov/mats/actions.html>.

² The Enforcement Policy applies to generating units that would deactivate as a result of the MATS or those that experience unexpected delays in completing retrofits implemented to comply with the MATS.

³ The IRC is comprised of the Alberta Electric System Operator (“AESO”), the California Independent System Operator Corporation (“CAISO”), Electric Reliability Council of Texas (“ERCOT”), the Independent Electricity

II. Enforcement Policy Overview

The Enforcement Policy provides an avenue for electric generating facilities to acquire, through administrative orders (“AOs”), up to a year of operation in noncompliance of the MATS to address concerns with electric reliability. EPA has sole discretion to issue the AOs, but expects participation in the process from entities with responsibility for reliability planning and coordination. EPA states that it expects these entities to provide early identification of any reliability critical units within their purview through the system-wide reliability plans they develop and maintain.⁴ Further, the generating unit seeking the compliance exemption is directed to provide EPA with written concurrence, or analysis, from the Planning Authority that the unit is needed for reliability or, in the alternative, a written explanation of why such concurrence or separate and equivalent analysis cannot be provided, and, where practicable, any related system wide analysis by such entity.⁵

EPA also indicated that, as necessary, it will seek input from entities with reliability expertise.⁶ Such entities include FERC, NERC and its Regional Entities, and state public service and utility commissions (“PSCs” and “PUCs”). To facilitate an expeditious and thorough review, the Enforcement Policy establishes notice and submission guidelines for entities

System Operator of Ontario, Inc., (“IESO”), ISO New England, Inc. (“ISONE”), Midwest Independent Transmission System Operator, Inc., (“Midwest ISO”), New Brunswick System Operator (“NBSO”), New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”). The AESO, IESO, and NBSO are not subject to the Commission’s jurisdiction, and are not joining in these comments. ERCOT is subject to the Commission’s jurisdiction for reliability matters pursuant to Section 215 of the Federal Power Act. ERCOT is not joining in these IRC comments. The IRC’s mission is to work collaboratively to develop effective processes, tools, and standard methods for improving the competitive electricity markets across North America. In fulfilling this mission, it is the IRC’s goal to provide a perspective that balances Reliability Standards with market practices so that each complements the other, thereby resulting in efficient, robust markets that provide competitive and reliable service to customers.

⁴ Enforcement Policy at 4. EPA later refers to these entities as Planning Authorities as defined in the NERC Glossary of Terms at http://www.nerc.com/docs/standards/rs/Reliability_Standards_Complete_Set.pdf.

⁵ *Id.* at 6.

⁶ *Id.* at 7.

interested in obtaining an extension in their MATS compliance obligation to address reliability concerns. To qualify for an AO, generating units are required to provide notice to Planning Authorities of their MATS compliance plans.⁷ Requests for AOs pursuant to this process must be submitted to appropriate EPA offices/divisions, with a copy of the submission provided to FERC. In addition, notice that a request for an AO has been made must be provided to the relevant Planning Authority, state PUCs/PSCs and tribal authorities.⁸ EPA has not established roles for any of these entities, other than the role earlier discussed for Planning Authorities.

III. IRC Comments

A. Summary of IRC Position

To maximize the benefit and effectiveness of the Enforcement Policy, the process for obtaining relief from the MATS for reliability critical units must be efficient and transparent and be able to provide effective solutions within the tight timeframes established by EPA in the MATS rule. To facilitate this goal, existing Order 890-compliant processes that can meet the informational support needs of EPA should be leveraged. Consistent with this position, the IRC supports Commission's proactive approach to addressing its role in the EPA Enforcement Policy process. The existing processes employed by Planning Authorities and FERC's oversight capability can provide the reliability information necessary to support the EPA Enforcement Policy process.

Consistent with its role as a regulator, FERC should provide comments to EPA as requested concerning the substantive analyses performed by the Planning Authorities rather than conduct a *de novo* review. The IRC believes that this approach will leverage existing reliability-

⁷ *Id.* at 5.

⁸ *Id.* at 5-6. There are notice requirements for units that intend to deactivate and for units that retrofit to comply with the MATS rule but experience unexpected delays in that process.

related processes and provide the functional and oversight value sought by EPA in its consideration of applications for AOs under the Enforcement Policy. With respect to the scope of FERC's review, the Commission should remain flexible in terms of what determinants indicate a reliability concern, and avoid, at this preliminary stage, to unduly constrain its own ability to comment upon the specific rules and processes utilized by the Planning Authorities to identify reliability concerns. Each situation will be different and highly fact-specific. As a result, the IRC believes it would be prudent for the Commission to retain flexibility as to the scope of its review and comments to EPA.

The IRC urges FERC to consider all of the reliability criteria employed by the Planning Authorities. Strict application solely of the NERC standards and violations thereof may not always represent the universe of reliability metrics/benchmarks for assessing reliability impacts related to the loss of a generating facility as a result of the MATS. To ensure all appropriate reliability considerations are presented to EPA in this process, the Planning Authorities may look at regional reliability rules/processes (including applicable state and local transmission owner rules) that are incremental to the NERC Standards.⁹ With potential FERC comments taking account of all reliability criteria employed by the Planning Authority, EPA will receive the benefit and value of the Commission's expertise with respect to a complete review of the relevant Planning Authority findings.¹⁰

In addition, FERC should not limit its comments to whether there may be an actual violation of a reliability standard but rather whether the reliability analysis has reasonably

⁹ All of these standards are transparently identified through FERC's Form 715 which is publicly filed.

¹⁰ To ensure an effective and efficient process is employed for this purpose, all relevant reliability rules and processes should be considered by the Planning Authorities in assessing the reliability impacts. All relevant matters and processes presented by the Planning Authorities should also be pertinent to and available for FERC comment. State regulatory entities may also be commenting on the Planning Authority analysis in those cases pursuant to Section 215 of the Federal Power Act where state jurisdictional reliability standards are included in the Planning Authority analysis.

identified a potential violation and thus a reliability concern. Concerns may not be identified in the final Planning Authority analysis as actual “violations” because established processes require the Planning Authority to establish corrective actions to address the matter in the relevant prospective timeframe, when study results identify a reliability concern/issue, in order to avoid a violation of the standard. Accordingly, FERC’s review in this process should not be limited to actual standards violations.

Finally, to facilitate an effective and efficient process, the Commission should discourage the creation of new processes at NERC or the Regional Entities to establish additional layers of review and analysis beyond those required by FERC Order 890 and the existing RTO/ISO tariffs. EPA has sole discretion to grant AOs under the Enforcement Policy.¹¹ The Planning Authority’s existing processes and FERC’s oversight capability can provide the reliability information necessary to support the EPA Enforcement Policy process. The reliability planning studies undertaken by Planning Authorities for their respective areas can be leveraged to assess the reliability impact of the loss of specific units resulting from the MATS. Moreover, FERC’s oversight of the activities of Planning Authorities provides it with the authority to engage in the commenter role with respect to these evaluations. EPA should rely on these respective analytical and review processes as direct and substantive input for its process.

B. FERC’s Role in the EPA Enforcement Policy Should Be To Provide Comments Upon the Reliability Analyses Performed by The Planning Authorities As Appropriate Based on the Relative Complexities of the Situation And Its Relevance to the EPA Review Process.

FERC should focus on reviewing the analyses performed by the Planning Authorities and should not involve itself in performing actual reliability analyses through a *de novo*

¹¹ Enforcement Policy at 7.

review or otherwise.¹² Given the significant experience of Planning Authorities to date in these efforts, new roles and processes would provide little, if any, incremental value, and, in fact, could undermine the effectiveness of the process by adding unnecessary delay. FERC does not conduct reliability assessments now and it should not do so in the context of the EPA Enforcement Policy process.

Consistent with this position, before filing comments to EPA, FERC should review the reliability analyses provided by the Planning Authorities for compliance with the relevant rules and procedures. Provided the analyses were sound, FERC would not object to the determinations/conclusions presented therein.

The IRC's position is consistent with the EPA's expectation that the substantive input will be provided by Planning Authorities and that FERC's role would involve high-level review comments on that analysis. In this manner, EPA receives the substantive analyses and review input from the appropriate entities in the performance of their existing functions, thereby facilitating an effective and efficient process.

C. The Scope of FERC Commentary Should Not Be Restricted to NERC Standards And Violations of NERC Standards

FERC Staff proposes that the Commission's review of reliability analyses performed in support of the EPA Enforcement Policy process would be limited to the NERC Reliability Standards.¹³ The NERC Standards may be relevant in assessing the reliability impact of the loss of particular generating units. However, there may be regional and local reliability rules,

¹² In the White Paper, FERC asked whether it should conduct a *de novo* review. The IRC would caution FERC against performing a *de novo* review, as it would add an unnecessary layer of review to a process that must be carried out in a short time frame.

¹³ See Enforcement Policy at p. 7.

referenced in FERC-jurisdictional tariffs, and incremental to the NERC Standards, that may also be relevant in these reliability analyses.

Furthermore, the studies employed by a Planning Authority for this purpose may not align exactly with the studies that are relevant for compliance purposes under the NERC standards. Accordingly, limiting FERC's review to the NERC Standards and processes may be too restrictive, and may undermine the review value that FERC can provide to EPA in these matters.

The value that FERC provides in this process is the oversight review - *i.e.* the "check" - on the reliability analyses performed by the Planning Authorities, as discussed above. This value should apply to Commission review of all reliability standards considered by the Planning Authorities as detailed in FERC Form 715.¹⁴ Moreover, consideration of all relevant rules is consistent with the scope of the Enforcement Policy, which states that the transmission reliability analysis provided by the requesting party must demonstrate that failure to operate the subject unit would violate at least one of the reliability criteria filed with FERC, or, in the case of ERCOT, with the Public Utility Commission of Texas. The IRC believes the scope of this statement indicates an intent to include NERC Reliability Standards and the regional reliability criteria that are incremental to the NERC standards, including those that are referenced or included in FERC jurisdictional ISO/RTO tariffs.

By reviewing reliability analyses related to the application of all relevant reliability standards, FERC will provide the comprehensive oversight/review benefit sought by EPA.

¹⁴ The FERC jurisdictional ISOs/RTOs may have rules/standards in, or referenced in, their FERC jurisdictional tariffs that could be implicated in reliability reviews executed pursuant to this process because they raise regional reliability concerns. If these non-NERC rules are implicated in reliability determinations, FERC should include them in its review of these matters and provide comments to EPA. This approach provides EPA with a complete reliability impact evaluation - including both the substantive analysis and the Commission's review of that analysis.

The IRC appreciates that FERC may want to specifically circumscribe the scope of reliability considerations it will consider when providing its input to EPA in this process, but it should not limit the material available to it for comment to the NERC standards.¹⁵

To the extent the Commission decides it does want to focus only on the NERC standards, it should make clear in any comments provided to EPA that its review may not reflect all relevant reliability analyses. By noting that its review is limited to the NERC standards, FERC should ensure that EPA also consider the reliability assessment information provided by the Planning Authority even when such was not reviewed by the FERC.

D. The Basis for Reliability Impact Determinations Should not be Limited to Actual Violations of NERC Standards

FERC Staff proposes that the Commission's review be based on whether a violation of a NERC Reliability Standard might occur. While Planning Authorities are likely to employ the process developed for conducting NERC compliance analysis, they are not likely to limit the time frame and assumptions for these reliability determinations to those they use for NERC compliance analysis.

The TPL standards for NERC compliance analysis require that studies be performed in accordance with required parameters. If such a study identifies a reliability concern/issue relative to system performance metrics, the Planning Authority is required to establish a corrective action to address the matter in the relevant prospective timeframe *to avoid* a violation of the standard. Therefore, FERC's review should consider all relevant factors identified in the

¹⁵ The IRC notes that in ISO/RTO regions, the appropriate reliability metric for resource adequacy issues is the planning reserve margin established by the ISO/RTO - the resource adequacy reliability analysis should be performed against the ISO/RTO planning reserve margin, and the ISO/RTO should be the entity that performs that analysis. The IRC takes no position on the appropriate resource adequacy reliability benchmark in non-ISO/RTO regions or on the appropriate functional entity to perform the related reliability analysis. Where ISO/RTO reserve margin procedures involve FERC jurisdictional rules, presumably FERC would review related reliability analyses and provide comments to EPA.

reliability analyses utilized by the Planning Authorities to review reliability impacts, not just the results.

E. FERC Should be the Entity Responsible for Submitting Comments to EPA Regarding the NERC Reliability Standards and Other FERC Jurisdictional Rules

Although FERC Staff does not address the role of NERC and the Regional Entities (“REs”) in the EPA Enforcement Policy process, FERC should be the entity responsible for reviewing Planning Authority reliability analyses.¹⁶ NERC is not a regulatory agency and has no jurisdiction over reliability standards and their implementation beyond that delegated to it by FERC. Congress gave FERC the authority to employ an Electric Reliability Organization (“ERO”) in the performance of its Federal Power Act Section 215 obligations. While NERC continues to perform the reliability assessments that it began prior to its designation as the ERO, the ERO is a functional arm of the Commission, the purpose of which is “to establish and enforce reliability standards for the bulk-power system, subject to Commission review.”¹⁷ Given the short time frame in which the reliability assessments must be made and provided to EPA under the Enforcement Policy process, it is important not to add a layered review process; FERC can carry out that role.

FERC is charged with ultimate oversight of reliability of the grid relative to its jurisdiction. NERC cannot substitute for FERC in this oversight role and there is no time in this process for multiple reviews of substantive reliability determinations by Planning Authorities. Neither is NERC in a position to perform Planning Authority functions. By NERC’s own definition, NERC is not a Planning Authority or Planning Coordinator,¹⁸ the entities expected by

¹⁶ As mentioned, states may also provide comments on the activity of the Planning Authority in their jurisdictions.

¹⁷ Federal Power Act Section 215(a)(2) (2005), 16 U.S.C. Section 824(o)(a)(2) (2010).

¹⁸ See: NERC’s definitions at http://www.nerc.com/docs/standards/rs/Reliability_Standards_Complete_Set.pdf.

EPA to be performing the substantive reliability analysis in support of designations of units as reliability critical.

The FERC oversight is sufficient to provide EPA with its “check” on Planning Authority process and conclusions. Therefore, FERC should be the entity responsible for providing the input to the EPA process related to review of Planning Authority analysis with respect to FERC jurisdictional matters.

IV. Conclusion

The IRC supports the Commission’s initiative to proactively define its role in the EPA Enforcement Policy process. Consistent with the above comments, the Commission’s review role relative to the reliability analyses performed by the appropriate functional entities will provide significant value to EPA in the administration of the Enforcement Policy process. In order to achieve the intended reliability benefits, the Enforcement Policy process must be effective, timely and transparent. The principles outlined in the above comments will promote

an efficient, timely and transparent process that will facilitate that outcome. Accordingly, the IRC respectfully requests that the Commission give due consideration to these comments in any future deliberations related to defining its role in the EPA Enforcement Policy process.

Respectfully Submitted,

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