

FERC Divided On EPA Rules Reliability Oversight But Supports 'Safety Valve'

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Federal Energy Regulatory Commission (FERC) officials are split over how they should weigh in on potential grid reliability impacts from EPA's suite of utility regulations, but appear largely united in their support for a "safety valve" that would grant extensions to the rules' compliance deadlines if necessary to prevent adverse grid impacts.

FERC staff have conducted an "informal assessment" of the reliability impacts from EPA's rules that predicts 81 gigawatts (GW) of power is likely or very likely to retire as a result of the regulations. But FERC Chairman Jon Wellinghoff at a Sept. 14 House Energy & Commerce Committee power panel hearing downplayed the findings as now "irrelevant," because the key shutdown numbers going forward will be projections from regional grid planners and that the assessment was never meant to be relied upon for grid planning.

Republicans, industry officials and others warn of adverse grid impacts from EPA's utility air, waste, water and climate rules if units shut down rather than choose to invest in pollution controls to comply.

The rules include EPA's recently finalized Cross-State Air Pollution Rule (CSAPR) emissions trading program and a proposed maximum achievable control technology (MACT) air toxics rule. EPA, backed by studies from the Bipartisan Policy Center and elsewhere, argues that the reliability impacts would be minimal given current levels of generation and that trouble spots could be addressed with proper planning and current regulatory tools.

Officials from EPA, FERC and the Department of Energy are involved in an informal effort to assess the projected retirements and potential reliability risks from the rules, although FERC Commissioner Philip Moeller -- a Republican -- in particular has long called for a more expansive and public dialogue with EPA about the effects of the rules.

In testimony at the subcommittee hearing, commissioners continued to show divisions within FERC over the proper role for assessing those impacts and the robustness of the commission's dialogue with EPA.

Wellinghoff, in a Sept. 14 document detailing responses to House energy committee questions, says he does not believe FERC should conduct an open and public process to assess the reliability impacts of EPA regulations on the electric grid. Instead, Wellinghoff -- a Democrat -- argues that regional grid planners like PJM Interconnection are in the best position to assess local, granular level reliability impacts, which commissioners raised as the key issue in assessing reliability.

FERC has three Democrats and two Republican commissioners, because laws governing FERC say that the commission be balanced between parties and that the President's party receive the majority.

Commissioners John Norris and Cheryl LaFleur, the other Democrats on the commission alongside Wellinghoff, said at the energy subcommittee hearing that FERC is well-suited to work with stakeholders in assessing the rules' impacts after EPA finalizes them, and that the commission should examine the tools available for utilities to help them comply.

Wellinghoff said that while FERC's conversations with EPA about reliability impacts from the utility rules are ongoing, the commission had no plans to revise its 81 GW informal assessment, describing it as a "back of the envelope analysis" that was meant to help EPA enter into discussions with regional planners about the regulations.

Norris also downplayed the need for more reports on the impacts of the rules, saying "I don't think another study about potential outcomes or different scenarios will add to our ability to address reliability."

Republicans' Concerns

Republican senators, however, have pressed for a more robust FERC reliability analysis, with Sen. Lisa Murkowski (R-AK) earlier this year requesting information from FERC over the extent of its collaboration with EPA over the utility MACT, assessments of the impact of rules on the reliability of the U.S. electric grid and other questions.

Wellinghoff wrote to Murkowski last month saying FERC staff "made an informal assessment of the reliability impacts of the proposed rules, but they have not conducted any full studies for a variety of reasons," including that several rules are not yet final. That response drew criticism from Sen. James Inhofe (R-OK), who is also questioning whether EPA "grossly

exaggerated" its coordination with other agencies on the issue.

Republican FERC Commissioners Moeller and Marc Spitzer at the hearing said FERC and EPA should expand their coordination and formalize that effort before the agency finalizes its utility rules.

Spitzer said at the hearing that "given the potential impacts of the EPA's rule on the bulk-power system, such coordination is critical to ensuring that the EPA will not enforce its rules in a vacuum."

Moeller has long called for such collaboration, saying at a Sept. 16, 2010 meeting that FERC and EPA should have "a more formal dialogue" to assess the reliability impacts of the agency's utility rules.

But speaking to *Inside EPA* after the hearing, Moeller downplayed the likelihood of more formal collaboration, and Wellinghoff "runs [FERC] so it's up to him as to whether there's going to be a process that involves the entire commission. . . I think I've been pretty consistent on what I've been calling for, and it hasn't happened yet."

Moeller also expressed uncertainty on how FERC will work with EPA going forward, saying pending questions from energy panel members could indicate where Congress wants FERC to go on the issue.

FERC's commissioners were in greater agreement on the need for EPA to use targeted tools and flexibilities to help the power sector meet the costs and deadlines for complying with the agency's rules, particularly if those flexibilities would help to keep facilities operating that otherwise would harm the grid if they were to shutter.

Rep. Pete Olson (R-TX) asked whether FERC would indemnify power plants against legal action by EPA or a private group if the facilities were required to continue running for reliability reasons but in the process violated EPA permits. All of the commissioners expressed concern about power plants being put in that position of having to stay operating yet risk litigation, with LaFleur saying that while they may not be able to indemnify them against legal action, FERC will try to work with other agencies in advance under those circumstances.

Spitzer – who said earlier in the hearing that "regulated entities should not be put in a position of having to select which agencies' penalty they would rather face" -- expressed support for a "safety valve" proposal put forward by several grid operators in August, saying it would prevent a "Hobson's choice" and "could solve that problem."

Utility Safety Valve

The safety valve, proposed by the Midwest ISO, PJM and others in Aug. 4 comments on EPA's proposed utility MACT rule, would have EPA in the final rule include a "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." This could include a "pro-forma consent decree, and the time period could be an additional fourth year to comply" with the air toxics rule "or longer if the circumstances so require," according to the comments.

The grid operators' comments on the MACT urge EPA to "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."

At the hearing, each FERC commissioner expressed support for the safety valve proposal or at the very least an interest in targeted flexibilities and tools to address noncompliance with rules in order to ensure reliability. Wellinghoff, for instance, describing the safety valve as "a remedy that would in fact take care of the problem."

Speaking with *Inside EPA* outside the hearing, Moeller said that he and the other commissioners will have to assess the key parts of a potential safety valve approach. While FERC would presumably have a role in such a process, it remains unknown whether FERC would direct regional grid operators to take action and how such an approach may tread upon the rights of power plant owners to make investment decisions that make sense for them, he said.

Asked whether FERC would need Congress to pass legislation to give the commission authority for such actions, Moeller said, "I don't think we do, but if we do, let's find out sooner rather than later."

Meanwhile, Wellinghoff told reporters outside the hearing that he spoke with EPA Administrator Lisa Jackson on Sept. 13 to discuss the Texas-based utility company Luminant's announcement that it plans to shutter the two units and cease lignite coal mining, costing an estimated 500 jobs. Company officials had blamed the move on the difficulties in having to comply with CSAPR, which establishes trading programs to cut power plants emissions.

Wellinghoff said that Jackson wanted to inform him of the closing of the plant, and said that he did not provide her with

information or advice on the company's plan. EPA and activists have said that the company's decision to close the units is due more to its poor investment choices, and that the agency reached out to Luminant on steps it might be able to take to help the company ease its concerns in complying with the trading program. -- *Bobby McMahon*
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