

**Testimony of Commissioner John R. Norris
Federal Energy Regulatory Commission
Before the House Subcommittee on Energy and Power
Of the Committee on Energy and Commerce
United States House of Representatives
September 14, 2011**

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee:

Thank you for inviting me to testify today regarding the impacts of the Environmental Protection Agency's (EPA) new and proposed power sector regulations on electric reliability.

My testimony is essentially an answer to question number 14 of the questions to which you requested my response. I view that question to be at the heart of why you asked me here today. The question is, "Are you fully satisfied that EPA's finalized, proposed, and anticipated power sector regulations will not adversely affect the reliability of the electric grid?"

In short, based on the information I have reviewed to date on EPA's regulations, I am sufficiently satisfied that the reliability of the electric grid can be adequately maintained as compliance with EPA's regulations is achieved.

I should begin with two important overarching points that are reflected in my testimony and answers to your written questions. First, I believe a reliable electric grid is extremely important to our economy and the safety of our citizens. In reliability, like many other elements of our electric power system, there is an intersection of physics, economics, policy, law and other factors. For that reason, I do not believe that we can

ever claim 100 percent satisfaction that the marketplace, laws, regulations, and other variable factors affecting the private and public entities engaged in our electric system will not at some time impact the reliability of the electric grid. I take very seriously my responsibility to oversee and protect the reliability of our electric grid, but nearly every decision involves choices between competing variables like cost, level of reliability, environmental protection, and other factors. There is not a single answer, so I strive to balance the many factors to achieve a sufficient level of reliability. There are too many variables, however, to expect that lawmakers, regulators or industry can guarantee future outcomes. The key is having the appropriate tools available so we are prepared to deal with the myriad of situations that might occur.

Second, I believe the medical research and underlying science overwhelmingly substantiate that the emissions and effluents the Clean Air Act and Clean Water Act require the EPA to regulate have had and will continue to have harmful and costly impacts on the health of Americans, particularly the most vulnerable in our society, our children, elderly and those in poverty. It is important to remember that the proposed and final regulations that EPA is working toward are an effort by the agency to satisfy the requirements of these two statutes in the face of court orders requiring the agency to act expeditiously to uphold the law.

Turning to EPA's rules, I believe that the EPA has adequately addressed reliability concerns and its statutory obligations with the rules established to date and I have no reason to believe that it cannot continue to do so as it finalizes proposed rules. I base my

beliefs first on the extensive analyses that have already been provided to date and are continuing to be performed by a wide variety of entities. There have been numerous studies by multiple entities that attempt to assess the reliability impact of EPA's proposed and final regulations. In my response to question 14, I have referred to or included seven publically-available assessments and analyses that I have found the most informative for reaching my conclusions. These studies have yielded a wide range of predictions or potential outcomes, due in large part to the differing assumptions they employ regarding the ultimate requirements EPA might adopt, the costs of compliance, and the relative economics of different types of generation. While the results of these studies do vary greatly, I have found none of them unreasonable, and none of them raise broad reliability concerns.

With these extensive macro level analyses already completed or ongoing, and given that I do not view them as revealing broad resource adequacy concerns, I believe the best course is for EPA to continue its work to finalize rules that it believes are both technically and economically achievable and adequately protective of public health. The Commission's best role is to utilize its tools and authorities to help manage the implementation of the EPA rules in the most efficient way possible. There are several tools available to help manage any reliability issues that might arise during compliance. The availability of these tools, when viewed in conjunction with the results of the macro level studies already produced, reveal a path forward to addressing compliance with these rules and allow us to guard against worst case scenarios.

For our part, FERC has two major sets of tools within our jurisdiction that enable us to help ensure reliability is not jeopardized as these regulations are implemented. The first is our regulation of the competitive wholesale power markets. Competition in the marketplace to meet future resource adequacy needs for maintaining grid reliability and adequate power supplies exists today at a level that gives me confidence in the marketplace as our first and best way to address the changes that will occur. These markets have fostered the development of new capacity resources, the development of demand side resources, and the emergence of technologies like electric storage to name a few. These market results, and our continuing oversight of those markets and the rules governing them, give me confidence in market solutions to most efficiently address the challenges presented by EPA's new regulations. To the extent changes to some market rules are needed as EPA's regulations are implemented, the Commission can quickly respond to such needs.

Second, the local and regional planning processes created under FERC Order No. 890, and the additional planning requirements now being developed to comply with FERC Order No. 1000, provide further tools to help address the challenges we may face to maintain reliability. Those processes provide a forum for stakeholders – industry, state commissions, and consumers alike – to consider both transmission and non-transmission solutions to ensure that the grid continues to meet reliability standards. Once EPA's regulations are finalized and generation owners are able to make their own decisions about the continued economic viability of their plants, these planning processes will be an

important tool for addressing specific reliability impacts that may result from specific generator retirements.

To be sure, it is possible that individual generation unit retirements may reveal specific local reliability issues that need to be addressed. The tools within FERC's jurisdiction that I note above provide opportunities to address these issues. However, there may be specific instances where compliance flexibility is necessary to ensure that local reliability is maintained. EPA has strongly indicated that electric reliability is an important consideration, and I have no reason to believe that they will not provide targeted compliance flexibility where needed to maintain reliability.

I would also add that it should come as no surprise that the many coal and oil generation facilities at issue in this discussion were likely to be retired in the near future regardless of EPA's current rulemakings. The Congressional Research Service notes that "[m]any of these plants are inefficient and are being replaced by more efficient combined cycle natural gas plants, a development likely to be encouraged if the price of competing fuel – natural gas – continues to be low, almost regardless of EPA rules".¹ It is evident that low natural gas prices are presently sending a strong market signal to retire many of these facilities. Price competition from natural gas as a fuel source is driving retirement of coal plants even in the absence of environmental regulations. In addition, the projection of low natural gas prices for the foreseeable future means we have an

¹ Congressional Research Service, "EPA's Regulation of Coal-Fired Power: Is a 'Train Wreck' Coming?", Summary (August 8, 2011).

opportunity to now transition from older, less efficient generation to newer, cleaner and more efficient generation at a cost to society much lower than it would be otherwise. I consider the upgrading of our electric generation fleet to a higher level of efficiency as a positive economic outcome, in addition to the health benefits associated with the environmental outcomes from the EPA regulations.

The most common request I hear from regulated entities is the need for certainty in regulations so businesses can make the most efficient decisions for investment in what is a capital intensive industry. A significant percentage of existing assets in the electric utility industry are over 40 years old, but with uncertainty in future environmental requirements, it is difficult to make decisions regarding when to retire those assets and what to replace them with. Delaying the implementation of EPA regulations to implement the Congressionally-mandated requirements of the Clean Air Act and Clean Water Act will only increase the level of uncertainty already existing in the electric generation sector. One more national study by FERC or any other entity is not going to provide any more certainty or information than we already have from the studies, comments and analyses that have already been produced in EPA's rulemaking process.

Providing certainty regarding the environmental requirements that generation resources will be required to meet will be key to ensuring that the market can respond. Historical data suggests that when called upon, the electric utility industry can bring significant amounts of new generation capacity online when conditions warrant. As the Congressional Research Service notes, from 2000 to 2003, over 200 GW of new

generation capacity was added, “far more than any of the analyses suggest will be needed in the 2011-2017 timeframe”.² My experience in Iowa also suggests to me that with regulatory certainty, industry will meet the challenge. After advanced ratemaking principles were established by lawmakers and regulators to reduce regulatory uncertainty associated with investing in new generation capacity, the state’s utilities responded, constructing significant new in-state resources.

Thus, with the information we have in hand and the tools available to mitigate any potential reliability concerns, I believe we can manage the integration of these new environmental requirements into the power system while maintaining a reliable electric grid.

² Congressional Research Service, “EPA’s Regulation of Coal-Fired Power: Is a ‘Train Wreck’ Coming?” at 34 (August 8, 2011).