

Testimony of Marc Spitzer, Commissioner
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

Mr. Chairman, Ranking Member Rush, and members of the Subcommittee:

My name is Marc Spitzer, and I am a member of the Federal Energy Regulatory Commission (FERC or Commission). I thank you for the opportunity to appear before you today to discuss my views on the potential impacts of the Environmental Protection Agency's (EPA) new and proposed power sector regulations on electric reliability.

In the Energy Policy Act of 2005, Congress assigned to FERC authority with respect to the reliability of the bulk-power system. I remain committed, as do each of my colleagues, to ensuring the reliable operation of our Nation's electric grid. Reliable service of electricity is essential to the health, welfare and safety of the American people and necessary to serve our economy. However, I recognize that environmental protection laws and regulations are important to the well-being of our Nation as well. The United States has superb records in both environmental protection and electric reliability.

The issue before us today is how to best address the potential impacts of the EPA's new and proposed power sector regulations on the reliability of the Nation's bulk-power system. I have several suggestions regarding the concerns raised. First, FERC and the EPA need to be proactive to ensure reliability concerns are considered and addressed in any analysis by the EPA of its environmental regulations affecting utilities.

To this end, I recommend that FERC and the EPA continue their dialogue but in a more formalized and expansive fashion. Given the potential impacts of the EPA's proposed rules on the bulk-power system, such coordination is critical to ensuring that EPA does not enforce its rules in a vacuum.

Second, the electric industry recognizes its obligation to comply with both environmental regulations and FERC-approved reliability standards and to plan their systems to reliably serve consumers while complying with environmental requirements. It is the regulated entity (whether an individual utility or an Independent System Operator/Regional Transmission Organization (ISO/RTO)), with better knowledge of its operations, needs and requirements, that is in the best position to determine through its planning process how it will meet the various regulatory requirements it faces. Decisions as to whether a unit is retired or retrofitted are typically made at the local or state level and state utility regulators generally play a significant role in resource adequacy decisions as well as compliance with the EPA's proposed regulations.

My concern is that regulated entities must have adequate time to plan their systems to comply with the rules that the EPA promulgates and with the FERC-approved reliability standards. Inadequate time to comply with the EPA's proposed regulations may result in the users, owners and operators of the bulk-power system being compelled by their government to choose between compliance with environmental laws or with FERC-approved reliability standards, and then face a penalty from one of the agencies. Regulated entities should not be put in the position of having to elect which agency's penalty they would rather face. Requiring public utilities to make such a Hobson's choice does not serve consumers and, frankly, is not good government. As an example of

one way to address this timing concern, in comments to the EPA, certain of the ISOs/RTOs propose a “reliability safety valve” that would permit a case-specific extension of time for compliance by a retiring generator needed to implement reliability solutions to replace the resource.

I suspect it will be the rare situation when a regulated entity finds itself, after having adequate time for planning, in a position of having to choose between compliance with one regulator’s rules over another’s. It should be the duty of the regulators to work together, and with the regulated entity, to find a resolution that best assures reliable operation of the electric grid and compliance with environmental standards without violation of either regulator’s rules.

I thank you for this opportunity to provide my views on these important matters. I am pleased to answer your questions.