In Support of Legislation to Give the Federal Energy Regulatory Commission a Formal Role in Determining the Potential Reliability Impacts of Major Federal Regulations

The electric utility sector is facing more than a dozen major environmental regulations between 2011 and 2020. These include the Mercury and Air Toxics Standards (MATS), Cross State Air Pollution Rule, National Pollutant Discharge Elimination System Cooling Water Intake Structure Rule (316(b)), Coal Combustion Residuals Rule, Effluent Guidelines for the Steam Electric Power Generating Point Sources, New Source Performance Standards for New Fossil Fuel-Fired Power Plants, and the proposed Emission Guidelines for Existing Fossil Fuel-Fired Power Plants (Clean Power Plan), among others. Collectively, these air, water, and waste regulations by the U.S. Environmental Protection Agency (EPA) will be the largest number of regulations to be promulgated in such a short period of time as well as the largest collective cost to utilities and their customers in the history of the electric power sector.

In addition to these environmental regulations, the electric utility industry is subject to regulations by other federal agencies, such as the Army Corps of Engineers and Bureau of Land Management. Many of these regulations could have implications for bulk-power system (BPS) reliability. To date, the Federal Energy Regulatory Commission (FERC or Commission), the federal agency Congress has charged with responsibility for ensuring the reliable operation of the BPS, has had no formal role in examining the potential reliability implications of these rules (other than advising EPA, case-by-case, on requests for EPA administrative orders allowing generators to operate in noncompliance with the MATS rule).

Of particular concern to the American Public Power Association (APPA) and many others in the electric utility industry is the potential impact of EPA’s proposed Clean Power Plan on grid reliability in certain parts of the country. The proposed rule’s principle objectives are for utilities to generate more electricity from natural gas and renewable resources and less with coal, and for the public to consume less electricity. And in order to achieve the aggressive carbon dioxide reduction goals set for the states, the proposed rule seeks to regulate not only the affected source—electric generating units—but rather the production and use of electricity by customers (i.e., outside-the-fence regulation). Electric utilities, regional transmission organizations, the North American Reliability Corporation (NERC), and FERC have expressed concerns about potential reliability issues arising from the Clean Power Plan given the impact the rule is likely to have on the use of coal-fired generation, and the need to replace that generation with new natural gas and renewable resources that will require significant build out of pipelines, transmission, and other infrastructure.
The Commission convened four technical conferences in 2015 to examine the possible effects of the rule on electric reliability, energy infrastructure, and wholesale electricity markets. In a May 15, 2015, letter to EPA Office of Air and Radiation Acting Assistant Administrator Janet McCabe, FERC’s five commissioners laid out how the Commission “can continue to fulfill its responsibility on Bulk-Power System reliability after EPA releases any final rule on the Clean Power Plan.” The letter discusses how FERC could assist EPA with the administration of a reliability safety valve that provides affected entities with the ability to petition EPA for temporary waivers from compliance obligations when “unforeseen delays in implementation […] risk harm to reliability.” It also discusses how FERC could assist in the reviewing of state plans “for interstate impacts on reliability (‘Reliability Monitoring and Assistance’).” And while the letter makes it clear that FERC, within the limits of its existing authority, is willing to assist EPA in examining reliability impacts from the Clean Power Plan, it also makes it clear that any assistance it does provide is totally at EPA’s discretion.

Legislation has been introduced in the Senate to provide FERC with a formal role in reviewing regulations that could impact bulk-power system reliability. Senate Energy & Natural Resources Committee Chairman Lisa Murkowski (R-AK) introduced S. 1221, the Bulk-Power System Reliability Impact Statement Act, on May 7, 2015, to require FERC and NERC to assess the potential impact of any major federal regulation on the reliability of the nation’s bulk-power system. On the same day, the House Energy & Power Subcommittee released a discussion draft on energy reliability and security (Title I of its Architecture of Abundance energy legislation). Section 1202 of the discussion draft would give FERC and NERC the ability to conduct independent, reliability analyses of major proposed or final rules to “evaluate the anticipated effects of implementation and enforcement of the rule on national, regional, or local electric reliability and resource adequacy.” While these provisions are aimed at the need to insert the issue of electric reliability in future, significant, regulatory proposals across the federal government, if enacted, they would indirectly help with the implementation of the Clean Power Plan by ensuring that new regulations are evaluated in the context of such implementation.

APPA believes the Commission should be given a formal role in reviewing future and final regulations that could impact bulk-power system reliability and is pleased that Chairman Murkowski and Energy & Power Subcommittee Chairman Ed Whitfield (R-KY) are seeking to give FERC such authority in the broader energy bills they are developing.
NOW, THEREFORE, BE IT RESOLVED: That the American Public Power Association (APPA) believes the Federal Energy Regulatory Commission (FERC) should be given the authority to analyze the potential reliability impacts of major proposed and final federal regulations; and

BE IT FURTHER RESOLVED: That APPA supports efforts by Congress to enact legislation that would provide FERC with a formal role in determining the potential reliability impacts on major proposed and final federal regulations.

As adopted June 9, 2015, by the membership of the American Public Power Association at its annual meeting in Minneapolis, Minnesota.