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**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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August 13, 2014

The Honorable Norman Bay  
Commissioner  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Dear Commissioner Bay:

Thank you for appearing before the Subcommittee on Energy and Power on Tuesday, July 29, 2014, to testify at the hearing entitled "FERC Perspectives: Questions Concerning EPA's Proposed Clean Power Plan and other Grid Reliability Challenges."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, August 27, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power

Attachment

## Additional Questions for the Record

### The Honorable Ed Whitfield

1. How many times did you or your staff meet with EPA to discuss the Clean Power Plan proposal?
2. Do you view EPA's proposed Clean Power Plan as an "energy plan" or a "pollution control" rule? Please explain your response.
3. Would you agree that the proposed Clean Power Plan gives EPA a certain amount of control over State decisions regarding the generation, supply and consumption of power, particularly if State renewable energy and efficiency programs are included in an EPA-approved State Implementation Plan?
4. As the D.C. Circuit Court recently held, FERC lacks authority to dictate how States plan and operate their energy systems. Are you aware of any statutory authority that permits EPA to mandate that States restructure their electric systems and subject State energy decisions to federal oversight and control?
5. To what extent does FERC have authority over State utility and resource planning? Are you aware of any statutory authority giving EPA greater authority in this area than FERC?
6. EPA projects nearly 180 gigawatts of generation capacity will retire between 2010 and 2020 in response to the Clean Power Plan and other factors, such as EPA's previously finalized Mercury and Air Toxics (MATS) rule. What do you view as the potential reliability impacts resulting from the loss of 180 gigawatts of generation over the next 6 years?
7. Would you be supportive of EPA including in its final Clean Power Plan a "reliability safety valve" that provides FERC greater authority to prevent the retirement of reliability critical generating units? What might such a safety valve look like?
8. Has EPA advised you about how the Clean Power Plan would work in states with multiple Regional Transmission Organizations (RTOs) or states with RTO members and non-RTO members or states with no RTO members? If yes, how would the plan work according to EPA?
9. EPA analyzed a set of compliance scenarios referred to as "Regional" scenarios. The regional scenarios allow emission rate averaging across affected sources within six multi-state regions, informed by North American Electric Reliability Corporation (NERC) regions and Regional Transmission Organizations (RTOs). What role does FERC see for itself in overseeing such regional compliance efforts?
10. Do you support the President's Climate Action Plan? Do you believe the President's plan is necessary to mitigate the impacts of climate change? Do you believe EPA's proposed Clean Power Plan is necessary to mitigate the impacts of climate change?
11. During the hearing, in response to a question from Rep. Rush regarding potential challenges resulting from EPA's Clean Power Plan, you stated:

I think that there could be challenges, but I think that the challenges are manageable. I would note, for example, that with the 2005 baseline that the EPA used, there has already been a 15 percent reduction in carbon emissions from generators so that an additional 15 percent needs to be achieved over the next 16 years.

  - a. Do you now understand that the emissions rate baseline used by EPA is actually 2012, and not 2005?

- b. Wouldn't you agree that a 2012 baseline makes compliance a considerably heavier lift than a 2005 baseline? Why or why not?
12. You stated during your confirmation hearing on May 20 that, with respect to EPA's Clean Power Plan, you would "try to assess what the reliability impacts are and what FERC can do working with key stakeholders, like EPA, States, the State Commissions, NARUC, RTOs, ISOs and industry to assure that there is sufficient planning and preparation and discussion that any challenges can be met."
  - a. Now that the rule has been out for several weeks, what conclusions do you have about its impact on reliability and rates?
  - b. Have you discussed the rule with anyone at the EPA? Please provide details with respect to any such conversation(s)?
13. Do you intend to identify for us the general circumstances and cases which you may consider recusing yourself from, and the results of those considerations? During your confirmation process, you identified 43 cases which might be subject to recusal. How are we going to know the disposition — and more importantly the extent — of those potential recusals?

**The Honorable Joe Barton**

1. I am concerned by FERC's practice of withholding evidence and information from the subject of investigation in cases of alleged energy market manipulation.
  - a. Please define market manipulation. Can an action deemed "market manipulation" follow the letter of the law but not the spirit? Please provide an example.
  - b. Is FERC required by law to provide the subject of investigation with the information it collected during the investigation?
  - c. Is FERC required by law to respond to the legal and factual arguments raised by the subjects?
  - d. Does FERC have a Compliance Office to assist those who have every intention to comply with market manipulation laws and have legitimate questions about how to do so? Would you commit to opening a Compliance Office?

**The Honorable David B. McKinley**

1. This January, during the "Polar Vortex", electricity customers in the PJM region experienced significant abrupt increases in their electricity costs, with bills rising to several times their normal levels. These price spikes were caused, in part, by significant generation outages during January, despite these generation resources receiving billions of dollars a year in advanced payments in exchange for their being available to provide energy during peak periods, whether in the extreme heat of the summer or the extreme cold of the winter. I am concerned that the causes of this situation have not been understood well enough to prevent it from happening again. Do you think you fully understand what happened and can assure us it isn't going to happen again? Has the Commission conducted a comprehensive root cause investigation and analysis of the situation, or directed PJM or the PJM Independent Market Monitor ("IMM") to do so?

- a. If yes, have those results been released publicly?
  - b. If no, why not?
2. What efforts has the Commission undertaken, or directed PJM and the IMM to undertake, to identify potential solutions to the generation performance problems that occurred during January 2014 in the PJM region?
3. Has the Commission determined whether any generation outages were reflective of attempts to manipulate market-clearing prices?
4. We understand that the delivered price of natural gas rose to historic highs in the PJM region during January 2014, and that these unprecedented delivered prices for natural gas were primarily the result of extraordinarily high prices for capacity on interstate natural gas pipelines in the PJM region. Has the Commission conducted a comprehensive root cause investigation and analysis, or directed PJM or the PJM Independent Market Monitor ("IMM") to conduct a comprehensive root cause investigation and analysis, of the unprecedented natural gas prices that surfaced in the PJM region during January 2014?
  - a. If yes, have those results been released publicly?
  - b. If no, why not?
5. What efforts has the Commission undertaken, or directed PJM and the IMM to undertake, or directed interstate natural gas pipeline operators to undertake, to identify potential solutions to the natural gas deliverability problems that occurred during January 2014 in the PJM region, either by better optimizing the use of existing assets or by constructing new assets or both?
6. Has the Commission determined whether any natural gas deliverability problems were reflective of attempts to manipulate natural gas prices or electricity market clearing prices?
7. Price increases for natural gas and electricity in the PJM region, and elsewhere, are very concerning to me. My constituents in the PJM region have asked me to ensure that markets have been, and are, functioning properly and that prices have not been increased by speculation or manipulation. It is now July, can you assure me that FERC intends to have answers to these questions about natural gas and electricity pricing BEFORE next winter?
8. In the Clean Power Plant proposed rule's Regulatory Impact Analysis, EPA notes that the Integrated Planning Model (IPM) was used to project the impact of the rule on electricity prices. The documentation for the IPM on EPA's web site explains that the model assumes both perfect competition and perfect foresight. The former means that "IPM does not explicitly capture any market imperfections such as market power, transaction costs, informational asymmetry or uncertainty." The latter "implies that agents know precisely the nature and timing of conditions in future years that affect the ultimate costs of decisions along the way." Does FERC agree that such a model can accurately capture how the proposed rule will impact prices? What are some likely differences in the actual implementation of the rule and this model?
9. Achieving compliance with the proposed rule will require a replacement of higher carbon dioxide emitting resources with new lower or zero-emitting units. Yet a recent study by Christensen Associates commissioned by the Electric Markets Research Foundation concluded that the RTO markets "do not and cannot address long-term capacity needs." The study also found that "[b]ilateral forward contracting

remains key under any market design for locking in revenues and facilitating financing of new resources. Contrary to this key necessity, however, the RTO markets include some design elements that impede long-term investments and long-term bilateral contracts.” What steps does FERC intend to take to ensure that RTO markets do not impede bilateral contracting needed for new resource development that will be required for state compliance with the rule?

10. Within the retail access states, most of the generation is no longer owned by vertically-integrated utilities and instead is under merchant ownership. There is no state or local jurisdiction over these merchant generation owners regarding whether to continue to operate or close a plant or what types of generation technology should be built. Does FERC see any difficulties in implementation of the proposed rule in states with large amounts of merchant generation?

### **The Honorable Gene Green**

Director Bay, as Director of Enforcement, your office is responsible for violations and inquiries into market manipulation.

However, unlike other federal agencies, FERC does not have an Office of Compliance or any other resource for the regulated community to address questions and concerns.

1. Mr. Bay, do you believe an Office of Compliance would be a benefit to the regulated community?
2. Is the Office of Enforcement opposed to additional transparency in its dealings with the regulated community?
3. Would you oppose efforts to create such an Office and/or other resources to assist in compliance activities?