

Energy Newsletter



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FERC Staff Proposes Process for Advising EPA on Requests for MATS Compliance Extensions *Neil L. Levy, David G. Tewksbury, Stephanie S. Lim*

The staff of the Federal Energy Regulatory Commission (“FERC”) recently requested comment on a white paper outlining a “fair, timely and transparent process” by which FERC could advise the Environmental Protection Agency (“EPA”) on requests for extensions of time to comply with EPA’s Mercury and Air Toxics Standards (the “MATS”). Under the Clean Air Act, affected power plants generally have three years to comply with the MATS, but the Act allows for extensions in certain cases. In addition, an EPA staff policy memorandum would allow up to five years to comply in cases involving specific and documented reliability concerns.

Under the process set forth in FERC staff’s white paper, an electric generator requesting an extension under EPA’s policy memorandum would be required to file the same information with FERC. FERC staff, led by its Office of Electric Reliability, would review the request to determine whether there might be a violation of a FERC-approved reliability standard. FERC would then submit written comments on each request to EPA. Although there would be no opportunity to intervene in the FERC review process, FERC staff would consider, when appropriate, comments submitted by interested persons. FERC staff requested comments on the proposed process, including, in particular, whether FERC should review issues arising outside of a potential violation of a reliability standard, and whether FERC should accord some level of deference to the reliability findings of the relevant planning authority.

The white paper follows a FERC technical conference in late November 2011 on reliability issues arising out of new EPA regulations, and participation by members of FERC and FERC staff in panels on these issues at a joint forum with the National Association of Regulatory Utility Commissioners. In addition, reliability issues also were raised in conjunction with FERC’s denial of a petition by the Public Service Commission of South Carolina (the “SCPSC”) requesting the creation of a joint board between FERC and the SCPSC to study the impact of EPA regulations on the reliability and affordability of electric power in South Carolina. In a concurring statement to the order denying the SCPSC petition, FERC Commissioner Philip D. Moeller acknowledged that FERC is not legally obligated to establish a joint board as requested by the SCPSC. Nonetheless, Commissioner Moeller expressed concern that, despite the evidence submitted at the technical conference and the importance of preserving grid reliability, FERC “has not yet demonstrated a commitment to overcoming the obstacles that have now been imposed on the reliable operation of the power grid,” and urged FERC to establish an “open and transparent process” for considering these issues.

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