



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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DEPUTY ADMINISTRATOR

Mr. Gerry W. Cauley
President and Chief Executive Officer
North American Electric Reliability Corporation
1120 G Street, N.W.
Suite 990
Washington, D.C. 20005-3801

Dear Mr. Cauley:

I am writing to express our concerns about your upcoming report that, according to the North American Electric Reliability Corporation (NERC), addresses potential reliability impacts of several U.S. Environmental Protection Agency (EPA) rulemakings. You recently shared with us a nearly final version of that draft report and took the time to answer some of our questions. While we at the EPA are appreciative of the ongoing conversations and respect NERC's role, and we have yet to see the final report, I wanted to write to reiterate the concerns we raised with your staff on the draft report.

NERC issued a similar report in 2010 which the EPA and other outside groups – including the independent, non-partisan Congressional Research Service – noted did not accurately portray the EPA's regulations or the likely outcomes for the electric grid. Based on our recent conversations with you it appears that your 2011 report may contain many of the same faulty characterizations of our rules.

As you know, many of the rules in question are years or even decades overdue. They will also yield massive public health benefits – the recently finalized Cross State Air Pollution Rule alone, for example, will prevent 34,000 thousand premature deaths and 400,000 cases of aggravated asthma per year.

The EPA has conducted analyses of the potential reliability impacts of the Cross State rule and the Mercury and Air Toxics Standards, and will conduct similar analyses prior to finalizing any other rule that may impact the power sector. Our analyses indicate that these rules do not threaten capacity reserve margin targets either nationally or regionally. Other analyses like those by the Bipartisan Policy Center have similarly concluded that "scenarios in which electric system reliability is broadly affected are unlikely to occur." This confirms what we have experienced in the 40 years under the Clean Air Act – 40 years of instituting public health standards without once compromising power companies' ability to keep the lights on in communities across the United States.

While NERC speculated about two EPA rules (for mercury and air toxics and cooling water intake) for your 2010 report, those rules have now been proposed and are in the public sphere. It is of concern that your current analysis does not accurately reflect the contents of these proposed rules.

First, the draft report incorrectly assumes the mercury and air toxics rule will impose requirements significantly stricter than our actual proposal. It appears to assume that companies with uncontrolled coal units will uniformly adopt the most expensive controls possible to comply with the standards (FGD and fabric filters), rather than selecting the most cost-effective technology that works for their facility. Even so, the principal reliability issues the analysis purports to identify are not related to the EPA's air rules. Instead, most of the facility retirements are attributed to the 316(b) cooling water intake rule – a rule which has yet to be finalized. With regard to the 316(b) rule, your draft report largely repeats the flawed assumptions from your 2010 report by assuming the EPA's final 316(b) rule will be far more stringent and costly than the rule the EPA has actually proposed.

As the August report by the non-partisan Congressional Research Service noted, “The [2010] NERC analysis assumed that mandatory cooling tower retrofits would be required by 2018...”, clarifying that in the EPA's actual 316(b) proposal we “declined to mandate closed-cycle cooling universally and instead favored a less costly, more flexible regulatory option.” Your “stringent” case appears to continue to assume that the EPA's cooling water intake rule will lead to 100% of units installing closed cycle cooling despite the fact that the EPA rejected this option in its proposal. Even the so-called “moderate” case requires cooling towers on 75% of affected capacity – even though the EPA's rule specifically allows permitting authorities to consider cost, remaining useful life, and impacts on reliability in determining what technology to require. This “moderate” case assumes states would require cooling towers even if this would lead to plant retirements that cause reliability problems.

In addition, the draft report you shared with our staff appears to assume that all facilities must comply with the 316(b) rule's requirements by 2018. As described in our actual proposal, facilities have up to 8 years (to 2020) to comply with the first part of the standard (primarily by installing fish-friendly screens, not closed cycle cooling) and even longer for the second part of the standard that involves detailed consideration of cost and any potential effects on reliability.

Your draft report also assumes that no one takes any action to address potential reliability issues when, in reality, the industry, grid planners and regulatory authorities have a strong track record of successfully identifying and addressing shortfalls in electric generating capacity – through construction of new generation, upgrades to the transmission system, and demand-side measures. Your current analysis simply assumes that the federal and state governments would let facilities that are critical to grid reliability close and that no one would step in to pick up the shortfall -- an outcome that flies in the face of our 40 years of implementing the Clean Air Act and the Clean Water Act.

NERC's draft report describes an extreme outcome that arises from a scenario where the most stringent and costly rules imaginable took effect, and no one at the federal, state, or local level took any steps to ensure the continued reliability of the grid.

Fortunately, the EPA's analysis and several external analyses show that, where the EPA's actual rules are accurately characterized, there is no adverse impact on capacity reserves in any region of the country. If isolated, local reliability challenges were to emerge due to individual plant retirements, the Clean Air Act and Clean Water Act provide flexibility mechanisms to ensure that sources can be brought into compliance over time while maintaining reliability. We have reached out to NERC, RTOs, State regulators and other stakeholders and will continue to work with you and those entities to ensure the continued reliability of the electrical system.

I would reiterate that the EPA is appreciative of our ongoing dialogue, and I hope that we can continue to engage in substantive conversations in the future; however, given that your report is about to be released – and given my understanding of the report's current mischaracterizations of our rules – I find it necessary to write to you to underscore our deep concerns with this product.

I would be happy to discuss this or other issues of mutual concern and look forward to continued conversations.

Sincerely,

A handwritten signature in black ink that reads "Bob Perciasepe". The signature is written in a cursive, flowing style.

Bob Perciasepe

