

**UNITED STATES OF AMERICA
BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY**

Carbon Pollution Emission Guidelines	}	
For Existing Stationary Sources:	}	EPA-HQ-OAR-2013-0602
Electric Utility Generation Units	}	

COMMENTS OF THE ISO/RTO COUNCIL

I. INTRODUCTION AND OVERVIEW

The ISO/RTO Council (“IRC”)¹ appreciates the opportunity to comment on the Environmental Protection Agency’s (“EPA”) Proposed Greenhouse Gas Rule (including the Notice of Data Availability issued October 30, 2014).² The Proposed Rule explicitly recognizes the issue of grid reliability³ and seeks comment on the “facilitative role” that Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”) may play in “developing and implementing region-wide, multi-state plans, or coordinated individual state plans.”⁴ In these comments, the IRC responds to EPA’s specific request for comments and

¹ The IRC is comprised of the Alberta Electric System Operator (“AESO”), the California Independent System Operator Corporation (“CAISO”), the Electric Reliability Council of Texas (“ERCOT”), the Independent Electricity System Operator of Ontario, Inc. (“IESO”), ISO New England, Inc. (“ISO-NE”), Midcontinent Independent System Operator, Inc. (“MISO”), New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”). IESO and AESO do not join these comments for jurisdictional reasons.

² Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34839 (June 18, 2014) (to be codified at 40 CFR Part 60.27 and Subpart UUUU) (“Proposed Rule”); Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Notice of Data Availability, 79 Fed. Reg. 64543 (October 30, 2014) (“NODA”).

³ Proposed Rule at 34836.

⁴ Proposed Rule at 34910.

recommends some additional modifications to the Final Rule to further ensure the consideration of grid reliability during implementation of the Final Rule.

The Proposed Rule reflects the need to maintain the reliability of the electric system. However, the IRC recommends that EPA incorporate the following additional modifications into the Final Rule that provide mechanisms to identify and mitigate potential negative impacts to grid reliability while minimizing complexity and administrative burden:

(1) As part of the Final Rule, require State Plans to include a component that describes the evaluation of impacts to state, multi-state, and/or regional grid reliability from the implementation of the proposed State Plan. In organized market regions, ISO/RTOs would perform the evaluation. In vertically integrated regions, the registered entities responsible for reliability in the state and/or region, *e.g.*, reliability coordinator, planning coordinator, etc., with independent review by the North American Electric Reliability Corporation (“NERC”) or the Regional Entity, would perform the evaluation. This component would also describe the assessment results and how the State Plan considered and/or addressed any identified impacts to grid reliability during the development of the State Plan;⁵

(2) As part of the Final Rule, establish criteria for EPA to use in reviewing the State Plan component that describes the evaluation and consideration of impacts to state, multi-state, and/or regional grid reliability from the implementation of the proposed State Plan;

(3) Apply the “glide path” flexibility proposed in the NODA to address gas pipeline and transmission infrastructure (“gas infrastructure”) needs to also address electric system infrastructure (“electric infrastructure”) development where: (1) the 2030 compliance deadline is achievable and (2) flexibility is needed due to the timing of necessary electric infrastructure development; and

(4) As part of the Final Rule, adopt a “Reliability Safety Valve” (“RSV”) process applicable during State Plan implementation to address unanticipated grid reliability impacts resulting from the administration of the State Plan.⁶ For the reasons stated herein, the RSV process and relief should be separate from the enforcement function.

⁵ Appropriate NERC-registered entities (*i.e.*, Reliability Coordinators and Planning Authorities) can facilitate the identification and consideration of electric system reliability in the development of State Plans (these are typically system operators and planners – *e.g.*, ISOs/RTOs in organized market regions of the country).

⁶ The IRC respectfully submits that the RSV should also be available to address unforeseen, extraordinary circumstances that manifest late in the State Plan development stage and that

These recommended revisions to the Final Rule will give EPA and the states the tools needed to avoid negative reliability impacts from implementation of its Final Rule by ensuring that appropriate state, multi-state, and/or regional reliability reviews occur at all relevant stages – *i.e.*, State Plan development, EPA review and approval, and State Plan implementation. In addition, the IRC proposals will facilitate sufficient “glide path” flexibility to address the myriad of gas *and* electric infrastructure complexities that may arise as the generation resource mix is modified in response to the Final Rule. Timely identification of reliability challenges, coupled with optimum flexibility to address and/or mitigate the impacts of such challenges, will best position the states, EPA, and entities responsible for reliability to effectively and timely respond to grid reliability issues while minimizing impacts to the attainment of the Final Rule’s objectives.

II. COMMENTS

Input from entities with assigned grid reliability responsibilities can support the development of a Final Rule and associated State Plans that avoid potential negative impacts to grid reliability. The IRC agrees with EPA that “ISO/RTO analytic support would allow the state to monitor the effects of its plan on the regional electricity system...” and “... could help states assure that their plans are consistent with region-wide system reliability.”⁷ Hence, the IRC respectfully submits that consultation with relevant system operators and planners (such as ISOs/RTOs) can provide substantial value in the development of the Final Rule and State Plans. Appropriate consultations will allow EPA, states, and other entities responsible for grid reliability to identify potential reliability impacts, taking into consideration the intra-state, inter-

would impact a State’s ability to develop a State Plan that meets its CO₂ goal or comply with a State Plan that is under EPA review.

⁷ Proposed Rule at 34923 and 34899.

state, and regional transmission and generation characteristics of system operations and planning that are critical to grid reliability. Further, because the Proposed Rule already sets forth a continuum of steps and processes, there are a wide variety of potential paths to compliance and substantial flexibility with respect to the timing and stringency of any interim goals. Accordingly, the IRC recommends that consultation occurs as early as possible and throughout all stages of Final Rule implementation, as necessary. This sort of “rolling” consultation will help ensure that the Final Rule does not negatively impact state, multi-state, and/or regional grid reliability. Additionally, incorporation of the IRC proposals discussed below into the Final Rule would facilitate such consultation with ISOs/RTOs.

Further, the observation in the NODA that “technical, engineering, and infrastructure limitations” associated with the gas infrastructure needs “may limit cost-effective options for emission reductions” is also applicable to electric infrastructure needs.⁸ Indeed, the additional electric infrastructure needs will not be known until State Plans are developed and evaluated; however, it is anticipated, in both the Proposed Rule and the NODA, that there will be substantial modifications to the overall generation resource mix during the compliance period. This is significant because the current electric infrastructure has been built and maintained to serve existing load from existing generation resources. As the generation portfolio changes, in terms of Megawatt output or geographical and electrical locations, it is likely that the electric infrastructure necessary to support such shift will need evaluation and upgrading or additions. Hence, as State Plans contemplate meeting CO₂ reduction goals through means that impact the generation portfolio – *e.g.*, shifts to significantly higher utilizations of natural gas and renewable resources, the Final Rule should accommodate the complexities associated with the upgrading

⁸ NODA at 64546.

and/or addition of electric infrastructure. To address such potential circumstances, the IRC recommends that the “glide path” flexibility designed to accommodate gas infrastructure for purposes of building block two also be applied to the overall compliance requirements during the interim period, rather than limiting this flexibility to those portions of the glide path associated with redispatching existing resources to less CO₂ intensive resources under building block two. This flexibility would also apply where: (1) electric infrastructure needs are identified; (2) additional flexibility is needed between 2020 and 2029 regarding achievement of interim performance goals and/or expectations in the State Plan for the other aspects of a state plan (including achievements of building blocks one, three, and four and the interaction of all building blocks in a state plan); and (3) the State Plan still contemplates meeting the 2030 compliance deadline.

Finally, because the dynamic nature of the grid may cause unforeseen circumstances to arise, especially in light of the long implementation timeframes in the Proposed Rule, a mechanism is necessary to address unforeseen grid reliability issues that cannot be addressed through the rule structure and/or within the proposed compliance period. Relatively long implementation periods could create disconnects between actual system conditions during those periods and system topology assumptions utilized during the Final Rule and State Plan development stages. These disconnects could create reliability issues, because the State Plan obligations would be applied to a system topology that differs from that assumed when the initial reliability assessments were performed. To mitigate potential grid reliability impacts that arise over time due to changing grid conditions and/or other unforeseen circumstances, the Final Rule should include a procedural mechanism (like the RSV) to identify and respond to reliability challenges throughout the long implementation period envisioned in the Proposed Rule.

The IRC believes that its proposed processes for review and consideration of grid reliability should be incorporated in the Final Rule to: (1) formalize the requirement to consider grid reliability; (2) minimize administrative burdens and/or difficulties for both States and EPA, (3) ensure their effectiveness in mitigating impacts to grid reliability; and (4) minimize impacts to the achievement of the objectives of the Final Rule.

A. Facilitation of Final Rule and State Plan Development by ISOs / RTOs

The Proposed Rule requests comments on joint state and/or cross-state targets and plans and, in particular, the contributions that ISOs/RTOs could make in setting and administering such targets and plans.⁹ ISOs and RTOs have wide area views and significant experience in grid operation and planning. They coordinate capacity and generation within and across regional boundaries to reliably manage transmission security over all time horizons. Changes in the capacity structure of a region may impact grid reliability, from an operations and planning reserve margin (*i.e.*, resource adequacy) perspective. This potential exists generally, but could be exacerbated because the Final Rule applies reduction obligations on a state basis, while system operations and planning for a vast majority of the country occurs on a regional basis.¹⁰ Without consultation, state-by-state compliance obligations may not align with the regional

⁹ Proposed Rule at 34910.

¹⁰ Many regional electric systems cover multiple states; however, there are single state ISOs (NYISO, CAISO and ERCOT) that perform regional operations and planning functions for the electric utility systems located within those states. Even in single state ISOs/RTOs, there is value to consultation, because, although the ISO areas are located within a single state, the systems typically have transmission constraints that must be managed, and the location and availability of generation in those regions plays an important role in managing grid reliability. Accordingly, even for single state ISOs/RTOs, consultation is advisable to understand the potential impacts that reduction targets and State Plans will have on grid reliability since those rules can impact the capacity available to the ISO/RTO to manage its intrastate transmission constraints.

operation and planning of electric systems. ISOs/RTOs are uniquely situated to support EPA and the states when considering state, multi-state, and/or regional reliability issues.

Accordingly, the IRC recommends that consultation with ISOs/RTOs occur during the development stages of the Final Rule and as contemplated in these comments. Such consultations would facilitate informed actions that consider and reflect state, multi-state, and/or regional reliability impacts by ensuring that relevant regional electric system reliability issues are fully understood. These reliability issues include, but are not limited to, the impacts of the distribution of generating resources that support regional operations. Further, recognizing cross-border dependency and the need for regional targets and/or plans when setting emissions targets and reviewing State Plans could avoid, or at least mitigate, issues that could arise from cross-border reliability dependency.

B. Consideration of Grid Reliability in State Plan Development and Review

In response to EPA's request for comments, the IRC recommends that the Final Rule explicitly: (1) require that State Plans include a component describing the assessment of potential impacts to state, multi-state, and/or regional grid reliability from the implementation of the State Plan; and (2) incorporate criteria to evaluate this component of each State Plan as part of EPA's process to determine whether a State Plan is "approvable."¹¹ Addressing the interconnected nature of the grid and related operational issues, such as transmission and generation usage patterns, proactively during the relevant State Plan development and review stages would

¹¹ Within the Proposed Rule, EPA has set forth the criteria it intends to utilize to evaluate the "approvability" of State Plans and the components that must comprise each State Plan. *See* Proposed Rule at 34911. The Proposed Rule explicitly sought comment upon the general criteria proposed for evaluation of State Plans and the twelve specific plan components. *See id.* Section 111(d) grants EPA's Administrator discretion to approve State Plans based on defined criteria and, while the proposed criteria is described within the Proposed Rule, EPA should revise these criteria to explicitly include consideration of potential impacts to grid reliability. *See id.*

identify reliability issues and support informed decisions during the development and implementation of the Final Rule to ameliorate potential adverse impacts to grid reliability.

1. Consideration of Grid Reliability During State Plan Development

In response to EPA's request for comments on the components of a State Plan,¹² the IRC recommends that EPA require states to seek an assessment of the potential impacts of the proposed State Plan on state, multi-state, and/or regional grid reliability from ISOs/RTOs in market areas and the NERC-registered entities responsible for reliability in the state and/or region, *e.g.*, reliability coordinator, planning coordinator, etc. with independent review by NERC or the Regional Entity, in non-market areas. This assessment should occur before the State Plan is submitted to EPA for review. Reliability assessments performed at this stage will: (1) enable interested stakeholders to identify grid reliability challenges and develop mitigation strategies that minimize impact to the timeline for achievement of state targets and (2) enhance the effectiveness and efficiency of the development and/or revision of State Plans by ensuring that such plans account for transmission and generation usage and patterns, and other relevant operational and planning information available from system operators and planners.¹³

To effect this proposal, the IRC recommends that EPA revise the Proposed Rule to require that State Plans include a component that describes the evaluation of potential impacts to

¹² *See id.*

¹³ For example, if State A receives a state-specific emissions target, and it develops its State Plan to meet the target without a reliability assessment, its State Plan could limit the run-times of its resources or even drive unit retirements, which may impact reliability in State B, a net importer from State A. Without a reliability assessment of the proposed State Plan that is coordinated with the entities responsible for reliability in the state and/or region, *e.g.*, reliability coordinator, planning coordinator, etc., such an impact to state, multi-state, and/or regional grid reliability would not be identified until the implementation of the State Plan, requiring State Plan modifications by States A and B, additional reviews by EPA, and potential impacts to interim goals, when other, more available corrective actions could have been taken if the issue had been identified earlier.

state, multi-state, and/or regional grid reliability. This component would include an assessment/description of the assessment performed, the results of such assessment, and how the state considered and addressed any identified impacts during the development of its State Plan. It should also allow states to submit supporting assessments and/or data as part of the Supporting Material component of its State Plan.

Including this component will ensure that potential negative impacts to grid reliability are identified and considered early on, providing a valuable opportunity to mitigate potential grid reliability impacts. The IRC further suggests that any revisions to State Plans also contain this grid reliability component, *i.e.*, perform a reliability assessment on the implementation of the revised State Plan and provide a description of the assessment, the results, and the actions taken to mitigate any identified grid reliability issues. By explicitly requiring that State Plans include a component describing the results of reliability assessments and how such results were considered and/or addressed during the development and/or revisions of the State Plan, and allowing states to submit additional data regarding such reliability assessments through the Supporting Material component, EPA can meet its objectives while facilitating state, multi-state, and/or regional grid reliability.¹⁴

2. Consideration of Grid Reliability During EPA’s Review of State Plans

In response to EPA’s request for comments on the “approvability” criteria that EPA proposes to use to evaluate State Plans,¹⁵ the IRC recommends that EPA revise the Final Rule to add criteria that evaluates the consideration of impacts to state, multi-state, and/or regional grid

¹⁴ The IRC has provided recommended language for this component in Attachment A to these comments.

¹⁵ Proposed Rule at 34909.

reliability that occurred during the development of a State Plan. Section 111(d) grants EPA discretion to approve State Plans based on defined criteria, while meeting “energy requirements.”¹⁶ Consistent with this authority and intent, the Final Rule should establish State Plan approval criteria that ensure adequate consideration of state, multi-state, and/or regional grid reliability issues during the implementation of the Final Rule.

The IRC is not proposing that EPA itself perform a *de novo* reliability review or perform a critical analysis of the State Plan reliability assessment. Rather, the State Plan review and approval process should evaluate State Plans to ensure that they describe the reliability assessment performed, the results of such assessment, and how the state considered and/or addressed any potential impacts to state, multi-state, and/or regional grid reliability in the final development of its State Plan.

The IRC respectfully submits that applying explicit criteria when reviewing State Plans will allow EPA to discern whether the State Plan evaluated, identified, and considered/addressed potential impacts to state, multi-state, and/or regional grid reliability and, where a State Plan submittal does not address the required elements of the above-described component, deem such State Plan inadequate in this respect. The inclusion of these “approvability” criteria will facilitate a Final Rule and related State Plans that are consistent with grid reliability by providing states and EPA with the opportunity to mitigate potential grid reliability impacts prior to implementation of State Plans.¹⁷ The Final Rule should make clear that, if plans are submitted

¹⁶ Section 111(a) of the Clean Air Act defines “standard of performance” as a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

¹⁷ The IRC has provided recommended language for the criteria in Attachment B to these comments.

that do not meet these criteria, the plans will be sent back for further consultation and work with the reliability authorities so that state, regional, and inter-regional impacts can be adequately addressed.

C. Application of “Glide Path” Flexibility to Electric Infrastructure Needs

The IRC appreciates the additional flexibility proposed by EPA in the NODA and believes it is consistent with electric reliability. Specifically, the NODA offers additional “glide path” flexibility for compliance with the Final Rule based on the need for gas infrastructure development and the potential timing issues that may arise where such issues prevent compliance with the Final Rule. However, the flexibility set forth in the NODA as one option appears to be limited to the use of building block two concerning redispatch of existing resources. In this way, it does not appear to provide the overall glide path flexibility that may be needed over the compliance period to address reliability issues that may arise, and cannot be remedied consistent with a strict averaging requirement for emissions reductions over the ten year compliance period. While EPA’s proposal provides incremental reliability value relative to the Proposed Rule, such “glide path” flexibility should also be applied to electric infrastructure needs that could impact the overall State Plan’s achievability over the compliance period. Such flexibility would better position states, EPA, and entities responsible for reliability to most effectively mitigate and/or respond to potential reliability challenges resulting from electric infrastructure needs that require flexibility in the overall compliance strategy set forth in the State Plan, but do not jeopardize the 2030 compliance deadline.

The IRC respectfully submits that, while entities affected by the Final Rule have greater ability to develop electric infrastructure than gas infrastructure, electric infrastructure development is still subject to many of the same complexities and uncertainties as gas

infrastructure development, *e.g.*, state and federal permitting processes, construction and equipment constraints and/or delays, right of way processes, and other technical and/or legal issues. In particular, while the responsibility for assessing electric infrastructure needs and identifying related projects lies with certain reliability entities, the technical, engineering, legal, regulatory, and financial aspects of such projects lies with the “owning” entity, which must coordinate all such projects with both state and federal regulatory entities (depending on the regulatory scheme for applicable regulations). Further, where projects involve regional electric systems, such coordination can involve multiple state agencies. In this way, electric infrastructure development is similar to gas infrastructure development, *i.e.*, it involves multiple entities with different interests and roles, which creates a degree of complexity and uncertainty regarding implementation timing that warrants inclusion of electric infrastructure development in the scope of the additional flexibility contemplated in the NODA. More simply put, where such issues justify flexibility for gas infrastructure development, they should also justify flexibility for electric infrastructure development involving each of the building blocks and their interaction under a State Plan. Further, whether and when generation resources are built (and whether existing electric infrastructure is adequate to serve such new generation resources) is a variable beyond the control of relevant reliability entities in many regions of the country where generation is a deregulated, competitive commercial function. This further supports the inclusion of electric infrastructure development with gas infrastructure development in the scope of the additional flexibility contemplated in the NODA.

The limited applicability of this “glide path” flexibility, *i.e.*, it is only available where flexibility is needed to accommodate the timing issues identified regarding necessary electric infrastructure, but the 2030 compliance deadline is not in jeopardy, provides an excellent

mechanism to address early, identified reliability challenges on either a case-by-case basis or as “triggered” by an event. More specifically, the Final Rule should provide that, where a demonstrated reliability issue would result without construction of necessary electric infrastructure, a state or region may depart from the “averaging requirements” for emissions reductions during the 2020-2029 compliance period and, instead, propose a more flexible (or region-specific) “glide path” so long as the 2030 compliance goal is met and affirmative steps are being taken during the compliance period. The IRC respectfully submits that either of these approaches, or a combination of the two, authorized in the Final Rule would provide flexibility that may be necessary due to the complexities and uncertainties of electric infrastructure development up front, resulting in certainty as the industry undertakes the significant actions needed to bring itself into compliance with the Final Rule’s requirements by 2030.

Although the IRC strongly supports the application of “glide path” flexibility to electric infrastructure needs, the IRC wants to be clear that, while the additional flexibility described in the NODA and in its comments above would provide substantial benefits to reliability, such flexibility is not available where attainment of the 2030 compliance deadline is in jeopardy. Furthermore, the NODA flexibility, even if expanded to electric infrastructure, may not address every situation that could arise during implementation of State Plans that may negatively impact grid reliability. Accordingly, the Final Rule should also include a RSV process, as described below, to effectively manage grid reliability issues that arise despite the application of additional flexibility to electric infrastructure development. In particular, in situations where such electric infrastructure development is not the primary issue, *e.g.*, unplanned retirements, unplanned outages of existing generation resources and/or transmission facilities, unplanned maintenance needs and/or delays (such as during equipment replacement), etc., and the 2030 compliance

deadline is in jeopardy, a RSV process will still be necessary to mitigate adverse effects on grid reliability. Hence, to ensure that grid reliability can be protected should such situations arise, EPA should also incorporate into the Final Rule the RSV process described below.

D. Reliability Safety Valve

The lengthy implementation timeframe in the Proposed Rule allows time for environmental and grid reliability issues to be jointly planned and managed during State Plan development, to the extent they have been correctly and completely identified. However, electric system topology/conditions can change over such lengthy time periods.¹⁸ Accordingly, the Final Rule should provide for adequate mitigation of unforeseen grid reliability impacts that may arise during the implementation of State Plans and which cannot be addressed within the extended compliance time frames either as a result of the time of identification or of the characteristics of the specific issue. Specifically, an RSV process that provides relief from compliance schedules, proposed State Plan activities, or performance expectations should be employed, where necessary, to preserve grid reliability. Other independent entities have also recognized the need for a process to address unforeseen grid reliability issues that would arise during the implementation of a State Plan.¹⁹ The inclusion of a RSV process applicable to relevant stages

¹⁸ The dynamic factors that impact electric reliability issues over time, including, but not limited to the planning, permitting, siting, and construction of replacement facilities, cannot be predicted with certainty over long term prospective periods. A RSV will facilitate effective management of conditions that may arise due to the application of the Final Rule and related State Plans to changing system topology over time. This will help prevent the Final Rule and related State Plans from creating negative impacts on grid reliability within that state or within another state or relevant regions.

¹⁹ See Potential Reliability Impacts of EPA's Proposed Clean Power Plan, Initial Reliability Review, November 2014, at p. 22, stating "NERC supports policies developed by the EPA, FERC, the DOE, and state utility regulators that include a "reliability assurance mechanism," such as a reliability back-stop, to preserve BPS reliability and manage emerging and impending risks to the BPS. ... [s]et of reliability assurance provisions that may include a reliability backstop, as well as other measures, would be recommended to maintain BPS reliability."

of the Final Rule will facilitate this result.²⁰ Accordingly, the Final Rule should incorporate a RSV that is available throughout the implementation period to facilitate effective management of unanticipated negative impacts to state, multi-state, and/or regional grid reliability for which corrective actions require relief from the existing compliance schedule and/or State Plan goals or performance expectations.

The IRC appreciates that State Plans will create an enforceable roadmap to achieve the emission reduction targets adopted in the Final Rule and acknowledges the additional flexibility that EPA is proposing in the NODA. Nonetheless, while such flexibility may facilitate the resolution or mitigation of issues identified very early in the compliance period, *i.e.*, during initial State Plan development, it will be limited to infrastructure-related issues and would not facilitate resolution or mitigation of reliability-related issues that do not manifest until late in the State Plan development stage (*i.e.*, the State Plan development is nearly complete or under review by EPA) and/or the State Plan implementation period has commenced. To address state, multi-state, and/or regional grid reliability issues arising at that time, the Final Rule should include a mechanism that: (1) is available without initiation of enforcement processes and (2) allows for course corrections when State Plan implementation strategies cause negative impacts to state, multi-state, and/or regional grid reliability and the identified mitigation strategies would not allow the state to return to compliance with the existing compliance schedule and/or State Plan goals or performance expectations.

²⁰ The Proposed Rule solicits comments regarding revision of State Plans when performance reporting indicates emissions targets will not be met. (*See*, Proposed Rule at 34908.) A RSV process applied during State Plan implementation (and late in State Plan development when unforeseen, extraordinary circumstances would impact a State's ability to comply with a State Plan that is under review or develop a State Plan that meets its CO₂ goal) will support appropriate actions under the Final Rule to effectively manage negative impacts on grid reliability.

With respect to the establishment and administration of the RSV process, it should be addressed within the context of individual State Plans rather than within an enforcement program. Entities should not be placed in untenable positions by competing regulatory enforcement schemes when grid reliability is at issue. For these reasons, the IRC urges that EPA make clear in its Final Rule that RSV implementation will be established and administered outside of the enforcement process.

The RSV process, through a petition to EPA, should be available to identify and respond to state, multi-state, and/or regional reliability issues that: (1) are unforeseen; (2) arise during implementation of approved State Plans²¹; (3) are fully identified; (4) have been independently verified by ISOs/RTOs in market areas and the NERC-registered entities responsible for reliability in the state and/or region, *e.g.*, reliability coordinator, planning coordinator, etc., with independent review by NERC or the Regional Entity in non-market areas; and (4) cannot be addressed through a State Plan modification that would allow the state to return to compliance with its existing, approved compliance schedule and/or State Plan goals or performance expectations. The RSV process would be available upon demonstration that the state, multi-state, and/or regional reliability issue meets the above criteria and that the state has: (1) evaluated other corrective actions to return to the standards of performance contemplated in the initial State Plan; and (2) identified a clearly defined mitigation strategy or – at a minimum – the immediate relief requested and the time period of such relief or mitigation strategy.

Relief under the RSV process would only occur after all other options are exhausted (including evaluation of whether there is a State Plan modification that would allow the state to

²¹ Except where unforeseen, extraordinary circumstances would impact a state's ability to develop a State Plan or comply with a State Plan currently under review that meets its CO₂ goal are identified.

re-attain compliance with its existing, approved compliance schedule and/or State Plan goals or performance expectations) and could result in any of the following: (1) an extension of approved compliance schedule(s) (including final and interim goals and time periods); (2) modification of a State Plan that includes, but is not limited to revision of the current, approved implementation strategy (including emissions limits), performance goals, standards of performance, associated compliance schedules, etc. The RSV should not need to be exercised where the state has identified corrective actions that allow it to meet its CO₂ reduction obligations in an alternative manner that mitigates the negative reliability impact and does not result in any other state, multi-state, and/or regional grid reliability impacts. In such instances, the “Modification of an Approved State Plan” process described in the Proposed Rule should be utilized.²²

To mitigate unwarranted use of the RSV, the process should be designed: (1) to apply only to state, multi-state, and/or regional reliability concerns that meet all of the above criteria and, therefore, warrant alternative relief under the RSV; (2) to the extent practical, be separate from the enforcement process or existing regulations governing modifications to State Plans under current EPA regulations; and (3) include objective reliability assessments/validations from entities charged with operating and planning the grid. Establishing the RSV outside of the enforcement arena and State Plan modification process will facilitate effective and efficient mitigation of negative impacts to state, multi-state, and/or regional grid reliability resulting from the Final Rule and related State Plans by removing potential conflicts between mitigating negative impacts to grid reliability and penalty exposure. Including an RSV that operates in the manner described above mitigates potential impacts to grid reliability in an effective, efficient, and timely manner, while also ensuring that any relief under the RSV minimizes impacts to the

²² Proposed Rule at 34916.

administration of the Final Rule and related State Plans. To accomplish this, the IRC has provided a recommended, detailed process for administering the RSV in Attachment C to these comments.

In summary, time and dynamic factors can affect the impact of State Plans on grid reliability. These include the planning, permitting, siting, and construction of replacement facilities. Unforeseen reliability impacts may arise as a result of changes to existing infrastructure, such as the unplanned retirement of a nuclear generating station, permitting delays associated with new or upgraded infrastructure, or lack of participation in demand side management programs. For example, the long lead times, complex permitting, and challenging construction attributes associated with the development of new infrastructure or the upgrading of existing infrastructure and the uncertainty associated with new Demand Response and Energy Efficiency programs could result in inability to meet previously approved implementation strategies (including emissions limits), performance goals, and/or associated compliance schedules. A RSV process is necessary when such circumstances occur and no alternatives would allow the state to meet its CO₂ reduction obligations while mitigating the negative reliability impact. Hence, the IRC urges EPA to incorporate this RSV into the Final Rule to address those instances where grid reliability (state, multi-state, and/or regional) is or may be adversely impacted and there is insufficient time to address the unforeseen reliability issue and still meet the compliance deadline.

III. CONCLUSION

These proposals are intended to complement EPA's proposed rule to: (1) provide incremental proactive grid reliability mitigation processes during State Plan development; and (2) effectively, efficiently identify and manage unforeseen grid reliability impacts. The IRC

members are committed to working with the states in their respective regions, EPA, and any other relevant entities, so the reliability impacts of the Final Rule and associated State Plans are thoroughly reviewed and understood. To facilitate the implementation of a Final Rule and associated State Plans that mitigates negative impacts to grid reliability while also mitigating the potential impact to the objectives of the Final Rule, the IRC urges EPA to revise the draft rule consistent with the recommendations presented in these comments.

Respectfully submitted,

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ATTACHMENT A

RECOMMENDED STATE PLAN COMPONENT DESCRIPTION

The IRC submits, for EPA's consideration, the following title and description of the component recommended for incorporation into the Final Rule to facilitate consultation with appropriate entities responsible for reliability during State Plan development. The IRC recommends that the component be entitled "Description of Evaluation and Consideration of Impacts to State, Multi-State, and/or Regional Grid Reliability" and require that,

"A State Plan must consider the impact of the plan to grid reliability and describe the assessment performed to identify the potential impacts of the proposed State Plan to state, multi-state, and/or regional grid reliability performed by ISOs/RTOs in market areas and the NERC-registered entities responsible for reliability in the state and/or region, *e.g.*, reliability coordinator, planning coordinator, etc. with independent review by the NERC or the Regional Entity in non-market areas; any state, multi-state, and/or regional grid reliability issues identified as a result of the evaluation performed; and how the State Plan considered and/or addressed such impacts. This component should include, but is not necessarily limited to, a description of: (1) the type of reliability assessment (*e.g.*, long-term or short-term, local or regional); (2) the scope of the assessment [*e.g.*, transmission security and power flows (thermal, voltage, stability); resource adequacy (including fuel interdependencies); adequacy of ancillary services, operating reserves, and current operating and emergency plans; and generation resource interconnection, retirements, and operating parameters (including nuclear)]; (3) the assessment results (*e.g.*, any near- or long-term grid reliability impacts identified) including any inter-state or regional dependencies or impacts identified (if relevant); and (4) how the state considered and/or addressed the assessment results in the State Plan including identification of any revisions or inter-state and/or regional coordination."

ATTACHMENT B

RECOMMENDED APPROVABILITY CRITERIA

The IRC submits, for EPA's consideration, the following title and description of approvability criteria recommended for incorporation into the Final Rule to facilitate its review of the states' consultation with appropriate entities responsible for reliability during State Plan development. The IRC recommends that the criteria be utilized as general "approvability" criteria entitled "Demonstration of Grid Reliability" and require that,

"In developing its State Plan, a state must describe: (1) the assessment to identify the potential impacts of the proposed State Plan to state, multi-state, and regional grid reliability performed by ISOs/RTOs in market areas and the NERC-registered entities responsible for reliability in the state and/or region, *e.g.*, reliability coordinator, planning coordinator, etc. with independent review by the NERC or the Regional Entity in non-market areas prior to submission of the State Plan for review; (2) the results of such assessment including identification of any state, multi-state, and/or regional grid reliability issues; and (3) how the state considered and/or addressed these issues in its State Plan submittal. To be approvable, in the component entitled "Evaluation and Consideration of Impacts to State, Multi-State, and/or Regional Grid Reliability," the State Plan shall address:

- 1) Whether the reliability assessment meets the criteria set forth above;
- 2) Whether the results of the reliability assessment indicated near- or long-term state, multi-state, and/or regional grid reliability impacts;
- 3) Whether, where multi-state or regional impacts were identified, those impacts were coordinated with the impacted region or state(s); and
- 4) Whether the State Plan was revised to address identified state, multi-state, and/or regional impacts to reliability and, if not, how such impacts to reliability were addressed, *e.g.*, revision of impacted state's or region's State Plan."

ATTACHMENT C

RECOMMENDED RSV PROCESS

The IRC submits, for EPA’s consideration, the RSV administrative process recommended for incorporation into the Final Rule. Specifically, the RSV should limit the scope of entities that are eligible to submit RSV petitions to EPA to those entities that have responsibility for grid reliability.²³ Other aspects of the process include: establishing rules related to the reliability assessment to be performed in support of the petition, the entities qualified to perform that assessment, the process for submission of such petitions to EPA, and the role of relevant regulatory authorities, including the Federal Energy Regulatory Commission (“FERC”). Consistent with the above comments, the IRC offers the following RSV process for EPA’s consideration:

- A Qualifying Entity [defined as states with an approved State Plan (including state agencies, *e.g.*, Public Utility Commissions), the functional entity registered by NERC that is responsible for reliability within the affected area, *e.g.*, Reliability Coordinator, Planning Coordinator, etc. in ISO/RTO market areas, or the Regional Entity in vertically integrated areas, or an entity that has been assigned an entity-specific obligation under the State Plan (*e.g.*, emissions limit)] submits an appropriate RSV petition to EPA. If an entity other than the state with the approved State Plan petitions EPA under this mechanism, including a state seeking to modify another state’s State Plan, the entity must demonstrate that it has already requested the applicable state to submit such a petition to EPA and the applicable state has rejected that request.
- The petition must:
 - Describe the unforeseen, fully identified grid reliability issue (state, multi-state, and/or regional) arising from implementation of a State Plan that is approved or under development/review;
 - Provide independent verification of the grid reliability issue (state, multi-state, and/or regional) performed by ISOs/RTOs in market areas and the NERC-registered entities responsible for reliability in the state and/or region, *e.g.*, reliability coordinator, planning coordinator, etc. with independent review by NERC or the Regional Entity in non-market areas;
 - Provide an explanation regarding why the grid reliability issue (state, multi-state, and/or regional) cannot be addressed through a State Plan modification that would allow the state to return to compliance with its existing, approved compliance schedule and/or State Plan goals or performance expectations (including what alternatives (including potential corrective actions) were evaluated prior to submission of the RSV petition and why the results of those evaluations indicated that the state would be unable to return to compliance with its existing, approved compliance schedule and/or State Plan goals or performance expectations through such alternatives).

²³ RSV submissions should be limited to “Qualifying Entities” as defined above. The RSV process should not provide a loophole that allows entities to avoid compliance through unsubstantiated reliability claims or litigation over the standard itself.

- Provide a detailed mitigation strategy to address the negative impact to grid reliability (state, multi-state, and/or regional) arising from the State Plan that is the subject of the petition including the relevant implementation plan, including, but not limited to, the expected implementation timeframe and any necessary permitting authority required to effect the mitigation strategy or, where relief is sought prior to full identification of the mitigation strategy being developed, the immediate relief requested and the time period of such relief.
 - Include supporting material and data including a grid reliability assessment performed by ISOs/RTOs in market areas and the NERC-Registered entities responsible for reliability in the state and/or region, *e.g.*, reliability coordinator, planning coordinator, etc. with independent review by NERC or the Regional Entity in non-market areas.²⁴ The assessment must explain the reliability issue (state, multi-state, and/or regional) in detail, including, but not limited to, the how the issue was identified, when it was discovered, and why it was not raised prior to State Plan approval); the negative impact on grid reliability arising from the State Plan that is the subject of the petition; and the identified mitigation strategy. Where the negative impact arising from a State Plan occurs in another state, the petition must explain what steps have been taken to address the impact.
- EPA evaluates the petition in consultation with the FERC and/or relevant regulatory agencies/delegates to determine whether the grid reliability issue (state, multi-state, and/or regional) warrants the requested relief. In considering whether to authorize relief pursuant to an RSV proposal, EPA should give significant weight and deference to the assessment and/or verification provided.
 - EPA grants or denies the relief requested in the Petition, which would be supported by and result from the mitigation strategy implementation timeline submitted in the Petition. More specifically, because mitigation strategies could involve multiple activities, including maintaining the availability of a resource otherwise impacted by the Final Rule/State Plan, completing a planned transmission addition, adding generation, or implementing authorized demand side management programs, the length of time for a compliance extension or any modification to the State Plan or approved compliance schedule to be authorized should be driven by the time needed to implement cost effective, timely, and efficient “mitigations” described in the RSV petition that address the identified grid reliability problem.
 - The Qualifying Entity is notified and undertakes any necessary actions, *e.g.*, State Plan modification, to implement its mitigation strategy.
 - The above process is undertaken pursuant to the provisions of the Rule itself outside of the enforcement process. A finding of violation against a state or an Electric Generating Unit is not a condition precedent to that entity receiving relief pursuant to this Section.

²⁴ By requiring independent assessment and, therefore, verification of the reliability issue posing a challenge to implementation of the Final Rule and/or State Plan, EPA can fairly balance the continued reliability of electric system with the successful attainment of the objectives of the Final Rule.