**UNITED STATES OF AMERICA**

**BEFORE THE**

**FEDERAL ENERGY REGULATORY COMMISSION**

Reliability Technical Conference : Docket No. AD12-1-000

**COMMENTS**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**February 29, 2012**

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# INTRODUCTION

 On December 21, 2011, the Environmental Protection Agency (EPA) released the Mercury and Air Toxics Standards (MATS) final rule pursuant to its authority under Section 112 of the Clean Air Act (CAA).The MATS final rule limits mercury, acid gases and other toxic emissions from power plants. Pursuant to Section 112(i)(3)(A) of the CAA, affected sources are required to comply within three years of the MATS effective date. Pursuant to CAA Section 112(i)(3)(B), some affected sources are eligible for a one-year extension (i.e. for a total of four years). The EPA’s Office of Enforcement and Compliance Assurance released a policy memorandum (EPA Policy Memorandum) dated December 16, 2011 describing its intended approach regarding the use of CAA Section 113(a) administrative orders (AOs) with respect to sources that must operate in noncompliance with the MATS for up to a year to address a specific and documented reliability concern *(i.e*. for a total of five years).

 On January 30, 2012, the Federal Energy Regulatory Commission (FERC) released a “Staff White Paper” explaining its position regarding how FERC should advise the EPA on requests for extension of time in order to comply with the MATS.FERC seeks comment regarding its proposed process in conjuncture with the EPA. The Public Utilities Commission of Ohio (Ohio Commission) hereby respectfully submits its com­ments to FERC.

# BACKGROUND

 Under the new emissions standards, affected sources must be compliant with MATS within three years, with an extension of up to one year available in certain cases. Here, the issue FERC seeks comment on, via its Staff White Paper, is the availability of an additional one-year extension beyond the four year period for compliance. As pro­posed, a fifth year can only be granted through an administrative order (AO) that is filed with the EPA.[[1]](#footnote-1)

 The EPA Policy Memorandum indicates that the EPA intends to seek advice, as necessary and on a case-by-case basis from FERC, among others, as the EPA decides whether it will grant an AO to an owner/operator. The EPA Policy Memorandum makes clear that the decision whether to grant an AO is solely the decision of the EPA and that any other entity’s opinion, including FERC’s, does not have to be taken into account when making its final decision.[[2]](#footnote-2) Furthermore, FERC’s Staff White Paper points out that it may consider third-party comments from the initial informational filings submitted by the owner/operator and other comments received by FERC in developing its own written comments to the EPA, but in doing so those commenters will not be treated as interveners and FERC would not be required to address comments received.[[3]](#footnote-3)

# DISCUSSION

## Ohio is vulnerable to reliability and price impacts from plant retirements.

 The mission of the Ohio Commission, as well as that of other state commissions around the country, is to implement the policies of our states while we assure all custom­ers access to adequate, safe and reliable utility service at fair prices. Statistics in 2009 demonstrate that coal fuels about 85 percent of the net electric generation in Ohio.[[4]](#footnote-4) The Edison Electric Institute Yearbook (2008 data) shows that the state of Ohio is sixth in electric generation and 24th in electricity consumption per capita. Coal makes up more than 65 percent of Ohio’s generation capacity. These statistics exhibit the importance of coal-fired power in Ohio.

 The future of coal-fired generation is facing challenges, both economic and environ­mental. In the past two years, natural gas price forecasts have been adjusted downward, further exacerbating the pressures on coal-fired generation.[[5]](#footnote-5) New environmen­tal regulations, such as MATS, further threaten the viability of coal-fired generation in Ohio. If and when plants are retired, Ohioans will be particularly vulner­able to the reliability and price impacts. Ohio Commission analysis has predicted that over 150 units presently[[6]](#footnote-6) within the PJM Interconnection (PJM) could be decommis­sioned by 2015 given the aggregate of recently proposed and finalized environmental regulations.[[7]](#footnote-7) Based upon a study by Charles Rivers and Associates, roughly 24 gigawatts (GW) of generation will be retired in PJM.[[8]](#footnote-8) Of the 24 GW, the Ohio Commission expects nearly seven GW to be retired in Ohio.

 This analysis was supported in early 2011 by American Electric Power’s (AEP) announcement that it will shut down nearly six GW of capacity due to environmental regulations. In addition, on January 26, 2012, FirstEnergy Corporation (FirstEnergy) announced that its generation subsidiaries will retire six older coal-fired power plants located in Ohio, Pennsylvania and Maryland by September 1, 2012. Of the six plants proposed to be retired by FirstEnergy, four are located within Ohio. FirstEnergy stated that the decision to close the plants is based on the EPA’s MATS and other environ­mental regulations. According to FirstEnergy, the total capacity of the competitive plants that will be retired is 2,689 megawatts (MW). [[9]](#footnote-9)

 Some of the expected retirements in Ohio will have localized impacts, resulting in reliability concerns in the state and region. The updated analysis from Fitch Ratings continues to project that Ohio will be among the five contiguous Midwest states with the most at-risk capacity.[[10]](#footnote-10) If reliability becomes a problem from retirements, then Ohio’s customers may become subject to paying for costly above-market solutions. The Ohio Commission believes it is imperative to share authority and relationships with other reg­ulating bodies in order to contribute to resolving reliability issues, and ultimately, pro­tecting Ohio consumers from unnecessary costs resulting from such issues.

## The Ohio Commission has the authority and relationships to ascertain, initiate and implement unit-specific reliability solutions in the face of plant retirements.

 The Ohio Commission has the authority, relationships, and will to constructively engage in investigating, evaluating, and selecting effective solutions to unit-specific reli­ability risks. Resolving localized reliability challenges resulting from plant retirements in the most expeditious and cost-effective manner will require the collaborative action of the RTOs and state commissions, in conjunction with additional state agencies such as power siting boards. In light of the EPA’s MATS, the collaborative efforts will become even more essential to protecting Ohio consumers from needless costs resulting from plant retirements. The collective authorities and capabilities of each of the agencies can and should be utilized for optimum results throughout this process.

## The Ohio Commission recommends that FERC use RTO analysis as its main source in determining solutions regarding reliability constraints and that the proposed “de novo” review be eliminated from the final process adopted by FERC.

 The Ohio Commission notes that FERC staff is seeking comments on whether FERC should conduct its own “de novo” review of an RTO’s reliability risk analysis of the unit that is the subject of an AO filing. Consequently, even if the Ohio Commission agrees with the RTO’s analysis and has worked to develop possible solutions as previ­ously recommended,[[11]](#footnote-11) under this proposal, FERC may disregard the RTO’s analysis and develop its own proposal. The Ohio Commission must preserve its role in the identifica­tion of solutions to the localized reliability constraint identified by PJM. In areas served by RTOs such as PJM, the RTO is in the best position to evaluate whether a localized reliability constraint will result.  FERC would most appropriately defer to the judgment of the RTO which works closely with state commissions. The Ohio Commission recom­mends that the “de novo” review be eliminated from the final process adopted by FERC and the use of RTO analysis as its main resource regarding reliability constraints.

## The EPA should work directly with affected state commissions and agencies in order to efficiently address possible reliability constraint issues resulting from plant closures under MATS.

 The Ohio Commission is concerned with the lack of options available for it to pro­vide essential information and recommendations under this proposal. The EPA and FERC have made it abundantly clear that it will not allow entities, such as state commis­sions, to be an official party to any process involving AOs submitted for approval. The Ohio Commission believes it is imperative to share authority and relationships with other regulating bodies in order to contribute to resolving reliability issues, and ultimately, to effectively protect Ohio consumers from unnecessary costs resulting from such issues. The current process described by the EPA and FERC lacks certainty and definition for states. The Ohio Commission and other state commissions will largely go unheard if the proposed MATS compliance process between the EPA and FERC is finalized without change.

 The Ohio Commission would be best served if the EPA were required to consult with a state in a manner that a state and the EPA come to an agreement on the final solu­tions addressing reliability concerns. This approach is consistent with the EPA’s Strategic Plan which states, “the EPA will consult with state and local governments on a routine basis to ensure that the development and implementation of rules is consistent with *EPA’s Action Development Process: Guidance on Executive Order 13132* (Federal­ism), which recognizes the division of governmental responsibilities between the federal government and the states.”[[12]](#footnote-12) A direct collaboration between state commissions and the EPA is the most efficient way to implement a solution agreeable to both parties.

# CONCLUSION

 The Ohio Commission respectfully requests that the EPA and FERC consider its recommendations regarding the process surrounding MATS compliance issues. Ulti­mately, it is in the best interest of the EPA, FERC, state commissions, RTOs and stake­holders to coordinate efforts in order to protect ratepayers and to preserve grid reliability. The Ohio Commission appreciates this opportunity to provide its thoughts and recom­mendations to FERC for its studied consideration.

Respectfully submitted,

*/s/ Thomas W. McNamee*

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**On behalf of**

The Public Utilities Commission of Ohio

# PROOF OF SERVICE

 I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

*/s/ Thomas W. McNamee*

**Thomas W. McNamee**

Dated at Columbus, Ohio this February 29, 2012.

1. EPA Policy Memorandum at 4. [↑](#footnote-ref-1)
2. EPA Policy Memorandum at 7. [↑](#footnote-ref-2)
3. FERC Staff White Paper at 7-8, Footnote 21. [↑](#footnote-ref-3)
4. Velocity Suite, a PUCO subscription database maintained by Ventyx, 2009. [↑](#footnote-ref-4)
5. Tierney, Sue, “EPA’s MACT, Water Cooling Intake and Transport Rules: What now for power generation?” (SNL Energy Webinar – Tuesday, April 12, 2011), slides 24 and 25, citing data from EIA Annual Energy Outlook (2008, 2011). [↑](#footnote-ref-5)
6. This analysis was conducted prior to the transfer of Duke Energy Ohio, Toledo Edison, Cleveland Illuminating Company, and Ohio Edison from MISO to PJM which occurred at the end of 2011. [↑](#footnote-ref-6)
7. These results were obtained from modeling performed by PUCO Staff using PROMOD IV production simulation software (PROMOD). [↑](#footnote-ref-7)
8. Summary of MRN-NEEM Results for EIPC BAU Sensitivity 3: Alternative EPA Regulations,” Charles Rivers & Associated, April 20, 2011. [↑](#footnote-ref-8)
9. FirstEnergy Press Release, January 26, 2011. [https://www.firstenergycorp.com/ newsroom/featured\_stories/Coal\_Plant\_Retirements0.html](https://www.firstenergycorp.com/%20newsroom/featured_stories/Coal_Plant_Retirements0.html). [↑](#footnote-ref-9)
10. The other four states are Pennsylvania, Indiana, Illinois, and Michigan. “Time to Retire II? The Update to Coal Plant Retirements,” (FitchRatings Special Report, November 17, 2011). [http://www.fitchratings.com/creditdesk/reports/report\_frame.cfm? rpt\_id=656410&cm\_mmc=Eloqua-\_-Email-\_-LM\_USPF%20NA%2fNYC%202011%2 fNov%2f17%20Teleconf%20Coal%20Plants-\_-0000](http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?%20rpt_id=656410&cm_mmc=Eloqua-_-Email-_-LM_USPF%20NA%2fNYC%202011%252%20fNov%2f17%20Teleconf%20Coal%20Plants-_-0000) . [↑](#footnote-ref-10)
11. In previous comments on behalf of the Ohio Commission filed by Commissioner Cheryl Roberto in Docket No. AD12-1-000, the Ohio Commission recommended a procedure that would help with identifying and solving reliability issues regarding plant retirements. The Ohio Commission suggested that when PJM, or other RTO, makes a finding that a unit is reliability critical, it should proceed to quantify the shortage and identify any potential transmission solution(s) or other solution which is within the authority of the RTO to implement, including but not limited to demand response. Furthermore, the results of the analysis should be referred to the Ohio Commission, or other state commissions, indicating a willingness and capability to identify and examine the unit-specific options available to resolve the associated reliability issues. The questions to be considered would include alternative solutions available and the reasonable time necessary to implement such solutions. At the conclusion of the state commission’s investigation, the state commission will indicate to the RTO the solution selected. Once the solution is identified, the appropriate agencies would proceed as necessary to implement it. [↑](#footnote-ref-11)
12. EPA-190-B-11-002 2011-2015, *FY EPA Strategic Plan*. http://www.epa.gov /planandbudget/annualplan/FY12\_SPAP\_Strat4.pdf. [↑](#footnote-ref-12)