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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, *MAJORITY STAFF DIRECTOR*
RUTH VAN MARK, *MINORITY STAFF DIRECTOR*

August 16, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

It appears that the Environmental Protection Agency (EPA) has grossly exaggerated the amount of coordination that has occurred with the Federal Energy Regulatory Commission (FERC) concerning the Utility Air Toxics Rule and its implications for electric reliability. The responses from the Chairman and Commissioners of FERC to Senator Lisa Murkowski's May 17, 2011 letter indicate that very little, if any, meaningful coordination has occurred between the two Agencies on the critical question of whether and how EPA's rules will affect the nation's electric power supply. Alarming, the FERC responses contradict statements EPA has made in both formal agency documents and public interviews.

For example, the preamble to the Utility Air Toxics Rule asserted a broad collaborative effort, noting that:

EPA itself has already begun reaching out to key stakeholders including not only sources with direct compliance obligations, but also groups with responsibility to assure an affordable and reliable supply of electricity including state Public Utility Commissions (PUC), Regional Transmission Organizations (RTOs), the National Electric Reliability Council (NERC) [sic], the Federal Energy Regulatory Commission (FERC), and DOE.

That rulemaking goes on to state:

EPA intends to continue these efforts during both the development and implementation of this proposed rule. It is EPA's understanding that FERC and DOE will work with entities whose responsibility is to ensure an affordable, reliable supply of electricity, including state PUCs, RTOs, [and] the NERC, to share information and encourage them to begin planning for compliance and

reliability as early as possible. This effort to identify and respond to any projected local and regional reliability concerns will inform decisions about the timing of retirements and other compliance strategies to ensure energy reliability.

Furthermore, based upon interviews with yourself and your staff, the press reported in January of this year that EPA and FERC were jointly modeling the potential for coal-fired power plant closures prompted by the pending rules.

However, the recent statements from FERC show that nothing as extensive as joint modeling has occurred. To quote FERC Chairman Wellinghoff, "Commission staff made an informal assessment of the reliability impacts of the proposed rules, but they have not conducted any full studies for a variety of reasons." Commissioner Moeller was even more succinct, stating "the Commission has not acted or studied or provided assistance to any agency, including EPA."

This of course calls into question the rest of the preamble in terms of the EPA's outreach on the critically important issue of reliability. It is vital for Congress and the American public to fully understand to what extent EPA considered reliability, particularly since the Agency has refused to conduct a comprehensive regulatory analysis of all pending regulations. Therefore, based upon the following list of regulatory actions and proposals, I request that the EPA provide me with the following information:

For the following proposals and actions:

- Cross-State Air Pollution Rule (final July 2011)
- Reconsideration of the NAAQS for Ground-Level Ozone (proposed January 2010)
- MACT Standards for Hazardous Air Pollutants and NSPS for Utilities – Utility Air Toxics Rule (proposed March 2011)
- Coal Combustion Residuals (proposed June 2010)
- Section 316(b) Cooling Water Intake Existing facilities Rule (proposed April 2011)
- Clean Air Act permitting for Greenhouse Gas Emissions (final June 2010)
- New Source Performance Standards for Greenhouse Gas Emissions from Electric Generating Units (proposal pending)

Please provide the following information:

A. Public Utility Commissions (PUCs)

1. A list of all of the PUCs, or associations of PUCs, that EPA consulted with regarding reliability issues:
 - a. the date of the initial contact, include the name of the party who initiated the contact;

- b. a copy of all correspondence between both parties including emails, letters, information requests, and any other forms of communication;
 - c. a schedule of all meetings between the parties, including a list of all participants;
 - d. copies of any minutes or meeting notes prepared by EPA employees or contractors.
2. Copies of any data requests made by the EPA of any PUC for the purposes of collecting information for modeling efforts:
 - a. copies of all data requests made by email, letter, notations from telephone conversations, or any other method;
 - b. copies of any information or data received from any PUC that was used by EPA for modeling, please designate any information that a PUC voluntarily submitted to EPA which was not requested by the Agency.
 3. Please describe any formal or informal working groups which involved EPA professionals and professionals from any PUC or associations of PUCs. For any such working group please provide the following:
 - a. a list of all members of the working group, including members outside of the EPA or PUC;
 - b. a list of all meetings, whether formal or informal, including the participants list for all such meetings;
 - c. any meeting notes including agendas, meeting notes from all EPA participants, and in the event that no such notes exist please provide a recollection of the discussion from the most senior EPA official participating;
 - d. any documents produced or reviewed by the participants of the meetings.
 4. In the event that any PUC independently submitted comments on any of the regulatory proposals or actions, you may submit those as well but please designate them as "unsolicited comments" meaning not in response to a specific information request by EPA. If you believe that the comments were specifically solicited then please include a copy of the specific solicitation that was directed to that PUC.

B. Regional Transmission Organizations (RTOs)

1. A list of all of the RTOs that EPA consulted with regarding reliability issues:
 - a. the date of the initial contact, include the name of the party who initiated the contact;
 - b. a copy of all correspondence between both parties including emails, letters, information requests, and any other forms of communication;
 - c. a schedule of all meetings between the parties, including a list of all participants;

- d. copies of any minutes or meeting notes prepared by EPA employees or contractors.
2. Copies of any data requests made by the EPA of any RTO for the purposes of collecting information for modeling efforts:
 - a. copies of all data requests made by email, letter, notations from telephone conversations, or any other method;
 - b. copies of any information or data received from any RTO that was used by EPA for modeling, please designate any information that a RTO voluntarily submitted to EPA which was not requested by the Agency.
3. Please describe any formal or informal working groups which involved EPA professionals and professionals from any RTO. For any such working group please provide the following:
 - a. a list of all members of the working group, including members outside of the EPA or RTO;
 - b. a list of all meetings, whether formal or informal, including the participants list for all such meetings;
 - c. any meeting notes including agendas, meeting notes from all EPA participants, and in the event that no such notes exist please provide a recollection of the discussion from the most senior EPA official participating;
 - d. any documents produced or reviewed by the participants of the meetings.
4. In the event that any RTO independently submitted comments on any of the regulatory proposals or actions, you may submit those as well but please designate them as "unsolicited comments" meaning not in response to a specific information request by EPA. If you believe that the comments were specifically solicited then please include a copy of the specific solicitation that was directed to that RTO.

C. The North American Electric Reliability Corporation (NERC)¹

1. A list of any meetings between NERC and EPA concerning reliability issues with the regulatory proposals or actions:
 - a. the date of the initial contact, include the name of the party who initiated the contact;
 - b. a copy of all correspondence between both parties including emails, letters, information requests, and any other forms of communication;
 - c. a schedule of all meetings between the parties, including a list of all participants;

¹ For "NERC," please include in your response any information applicable to NERC and any regional entity, reliability coordinator, or similar organization under or affiliated with NERC.

- d. copies of any minutes or meeting notes prepared by EPA employees or contractors.
2. Copies of any data requests made by the EPA of NERC for the purposes of collecting information for modeling efforts:
 - a. copies of all data requests made by email, letter, notations from telephone conversations, or any other method;
 - b. copies of any information or data received from NERC that was used by EPA for modeling, please designate any information that NERC voluntarily submitted to EPA which was not requested by the Agency.
3. Please describe any formal or informal working groups which involved EPA professionals and professionals from NERC. For any such working group please provide the following:
 - e. a list of all members of the working group, including members outside of the EPA or NERC;
 - f. a list of all meetings, whether formal or informal, including the participants list for all such meetings;
 - g. any meeting notes including agendas, meeting notes from all EPA participants, and in the event that no such notes exist please provide a recollection of the discussion from the most senior EPA official participating;
 - h. any documents produced or reviewed by the participants of the meetings.
4. In the event that NERC independently submitted comments on any of the regulatory proposals or actions, you may submit those as well but please designate them as "unsolicited comments" meaning not in response to a specific information request by EPA. If you believe that the comments were specifically solicited then please include a copy of the specific solicitation that was directed to NERC.

D. The Federal Energy Regulatory Commission (FERC)

1. A list of all of the contacts, consultations, meetings and other communications between EPA and FERC (Commissioners and staff) regarding reliability issues:
 - e. the date of the initial contact, include the name of the party who initiated the contact;
 - f. a copy of all correspondence between both parties including emails, letters, information requests, and any other forms of communication;
 - g. a schedule of all meetings between the parties, including a list of all participants;
 - h. copies of any minutes or meeting notes prepared by EPA employees or contractors.
5. Copies of any data requests made by the EPA of FERC for the purposes of collecting information for modeling efforts and any responses:

- c. copies of all data requests made by email, letter, notations from telephone conversations, or any other method;
 - d. copies of any information or data received from FERC that was used by EPA for modeling, please designate any information that FERC voluntarily submitted to EPA which was not requested by the Agency.
6. Please describe any formal or informal working groups which involved EPA professionals and Commissioners and professionals from FERC. For any such working group please provide the following:
- i. a list of all members of the working group, including members outside of the EPA or FERC;
- a list of all meetings, whether formal or informal, including the participants list for all such meetings.

4. Please provide any communications and any documents related to such communications between EPA and FERC concerning the responses provided by FERC to any inquiry from a Senator or Member of Congress related to any of the proposals and actions listed above and the impact or potential impact of such proposal or action on electric reliability.

E. The Department of Energy (DOE)

1. A list of all of the contacts, consultations, meetings and other communications between EPA and DOE (Presidential Appointees (PA) and staff below the PA level) regarding reliability issues:
- i. the date of the initial contact, include the name of the party who initiated the contact;
 - j. a copy of all correspondence between both parties including emails, letters, information requests, and any other forms of communication;
 - k. a schedule of all meetings between the parties, including a list of all participants;
 - l. copies of any minutes or meeting notes prepared by EPA employees or contractors.
7. Copies of any data requests made by the EPA of DOE for the purposes of collecting information for modeling efforts and any responses:
- e. copies of all data requests made by email, letter, notations from telephone conversations, or any other method;
 - f. copies of any information or data received from DOE that was used by EPA for modeling, please designate any information that DOE voluntarily submitted to EPA which was not requested by the Agency.
8. Please describe any formal or informal working groups which involved EPA professionals and DOE. For any such working group, please provide the following:
- j. a list of all members of the working group, including members outside of the EPA or DOE;

The Honorable Lisa Jackson

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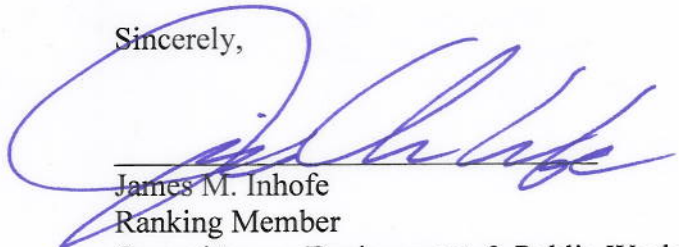
a list of all meetings, whether formal or informal, including the participants list for all such meetings

F. Current Coordination and on-going studies

1. Please provide a list of current projects related to EPA impacts on reliability that the Agency is conducting with DOE, FERC, NERC, RTOs or PUCs. List name of project, funding source, contract/grant no., project manager(s), EPA office in charge of project, and dollar amount of EPA's obligation. Give start and expected completion date, and a brief summary of the scope of work. Also provide a statement on whether the project will provide important information on reliability.
2. Describe current EPA coordination efforts with DOE, FERC, NERC, RTOs or PUCs regarding EPA impacts on reliability.

It is critical that EPA clearly display the specific level of outreach and consultation that is stated in the Utility Air Toxics Rule preamble so that we can better understand the extent to which reliability concerns were evaluated. Given the scope of this proposal, and the nearly \$11 billion annual costs that EPA estimates from this one rule, American citizens quite literally cannot afford to have you get this wrong. Please provide the requested information to me no later than September 6, 2011.

Sincerely,



James M. Inhofe
Ranking Member

Committee on Environment & Public Works