

149 FERC ¶ 61,138  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Kansas City Board of Public Utilities

Docket No. AD14-16-000

COMMISSION COMMENTS ON KANSAS CITY BOARD OF PUBLIC UTILITIES'  
REQUEST FOR EPA ADMINISTRATIVE ORDER

(November 20, 2014)

1. On August 19, 2014, Kansas City Board of Public Utilities (BPU) submitted a request to the Environmental Protective Agency (EPA) seeking an administrative order, pursuant to Section 113(a) of the Clean Air Act (CAA), to allow BPU additional time to comply with EPA's Mercury and Air Toxics Standards (MATS).<sup>1</sup> BPU also submitted a copy of the request to the Commission.<sup>2</sup>

2. 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 of the compliance deadline (i.e., for a total of four years). In a policy memorandum dated December 16, 2011, EPA's Office of Enforcement and Compliance Assurance described its intended approach regarding the use of administrative orders under CAA Section 113(a) with respect to sources that must operate in noncompliance with

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<sup>1</sup> EPA issued the MATS final rule pursuant to its authority under Section 112 of the CAA. *See* 42 U.S.C. § 7412(i)(3)(A).

<sup>2</sup> BPU submitted its petition to the Commission, and the Commission is providing comments to EPA, pursuant to the Commission's May 17, 2012 policy statement. *See Policy Statement of the Commission's Role Regarding the Environmental Protection Agency's Mercury and Air Toxics Standards*, 139 FERC ¶ 61,131 (2012) (Policy Statement).

MATS for up to one year to address a specific and documented reliability concern (i.e., for a total of five years).<sup>3</sup>

3. EPA states that the analysis provided in an administrative order request should demonstrate “that operation of the unit after the MATS Compliance Date is critical to maintaining electric reliability, and that failure to operate the unit would: (a) result in the violation of at least one of the reliability criteria required to be filed with the Commission, and, in the case of the Electric Reliability Council of Texas, with the Texas Public Utility Commission; or (b) cause reserves to fall below the required system reserve margin.”<sup>4</sup> The EPA Policy Memorandum indicates that the EPA intends to seek advice, as necessary and on a case-by-case basis from the Commission, among others, as the EPA decides whether it will grant an administrative order to an owner/operator. The EPA Policy Memorandum makes clear that the EPA decision as to whether to grant an administrative order to an owner/operator is solely the decision of the EPA and that the concurrence or approval of any entity is not a condition for approval or denial of an administrative order request.<sup>5</sup> On May 17, 2012, the Commission issued a Policy Statement explaining how it will provide advice to the EPA for it to rule on requests for administrative order to operate in noncompliance with EPA’s MATS rule.

4. The Commission’s Policy Statement provided that the Commission will advise the EPA by submitting written Commission comments to the EPA based on the Commission’s review of the information provided in an informational filing containing the request for the administrative order provided to the Commissions in an AD docket. The Commission’s comments would provide advice to the EPA on whether, based on the Commission’s review of the informational filing, there might be a violation of a Commission-approved Reliability Standard, and may also identify issues within its jurisdiction other than a potential violation of a Commission-approved Reliability Standard.

5. BPU requested an EPA administrative order to allow BPU to continue operation of its Nearman 1 electric generator unit for a six-month period, from April 16, 2016 to October 15, 2016. BPU states that the administrative order will allow BPU to complete

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<sup>3</sup> The Environmental Protection Agency’s Enforcement Response Policy for Use of Clean Air Act Section 113(a) Administrative Orders in Relation to Electric Reliability and the Mercury and Air Toxics Standard (Dec. 16, 2011), *available at* <http://www.epa.gov/compliance/resources/policies/civil/erp/mats-erp.pdf> (EPA Policy Memorandum).

<sup>4</sup> EPA Policy Memorandum at 7.

<sup>5</sup> *Id.*

the installation of air quality controls. BPU also offers to limit the operation of the Nearman 1 unit to one-third of its total annual production during this six-month period.

6. In doing so, BPU acknowledges that, within the context of the Southwest Power Pool (SPP) system, “Nearman 1 is a minor [unit] whose operation or non-operation is unlikely to cause transmission reliability or capacity reserve problems on the SPP system.”<sup>6</sup> BPU also notes that “SPP has not found any system-wide reliability risk under the NERC criteria standards should Nearman 1 not operate during the 2016 summer peak season.”<sup>7</sup> However, BPU states, *inter alia*, that the loss of the Nearman 1 unit would result in BPU not meeting the 12 percent capacity reserve requirement in SPP Criteria 2.1.9.<sup>8</sup> BPU also states that transmission constraints in its local area “will make importing sufficient replacement energy very difficult and that, assuming sufficient replacement energy can be imported, the price will be so high as to impose a substantial burden on its residential customers, particularly those who are struggling financially.”<sup>9</sup>

7. The reliability of the Bulk-Power System depends in part on whether utilities meet an appropriate planning reserve margin. BPU is responsible under the SPP Criteria for meeting a 12 percent capacity reserve requirement. Based on our review, we find that the loss of the Nearman 1 unit would result in BPU falling below the 12 percent capacity reserve requirement stipulated in SPP Criteria 2.1.9 unless BPU is able to procure replacement energy for the unit.<sup>10</sup> Absent a significant change in future circumstances,

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<sup>6</sup> BPU Submission at 7.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 8; *see also* Southwest Power Pool, Criteria 2.1.9 (Minimum Required Capacity Margin) (last revised July 29, 2014), *available at* <http://www.spp.org/publications/SPP%20Criteria%20&%20Appendices%20July%2029,%202014.pdf> . In fact, calculations indicate that BPU’s resources in 2016 without Nearman 1 will be below its projected load, let alone its reserve margin.

<sup>9</sup> BPU Submission at 9.

<sup>10</sup> Given this finding, we need not and do not address the other reasons cited by BPU in support of its request.

our view is that the Nearman 1 unit is needed as requested by BPU to maintain electric reliability per the EPA Policy Memorandum as described above.

By direction of the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.