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FERC Approves Policy Outlining its Role in EPA's New Mercury Rule

The Federal Energy Regulatory Commission (FERC) today approved a policy statement outlining how it will advise the Environmental Protection Agency (EPA) on requests for extra time for electric generators to comply with the new mercury and air toxics standards rule. The process addresses the need for timeliness, fairness and transparency while respecting FERC jurisdiction over reliability of the bulk power system.

FERC's policy takes into account comments filed in response to the January 30 staff White Paper, and is limited in scope as to how the Commission will provide advice to EPA. This is not a policy regarding how FERC will handle all electric reliability concerns arising from compliance with EPA regulations.

"This policy statement outlines FERC's advisory role within a narrow provision of the EPA rule," FERC Chairman Jon Wellinghoff said. "Outside the narrow scope of this advisory role, FERC will continue to address these matters in our public forums, review information regarding the impact of compliance on reliability of the grid and consider if we need further steps to monitor how these regulations will affect the reliability of the grid."

EPA gives generators three years to comply with its rules. Some generators will be eligible for a one-year extension and, if necessary, an additional year if they need to meet specific reliability concerns. FERC's policy statement deals with this final year to comply. Any decision on whether to grant this additional time, and the extent to which FERC's advice is considered, rests entirely with EPA.

Under the FERC policy statement:

- Generators should submit to FERC as informational filings copies of their requests to EPA for extra time for compliance.
- FERC's Office of Electric Reliability will lead the review of the filings under the Commission's general investigative authority; the reviews will examine whether compliance with EPA's rule could result in a violation of a FERC-approved reliability standard or other issues within FERC's jurisdiction.
- There are no specifically required analyses to show that operation of a generating unit beyond the compliance date is critical to maintain reliability, though informational filings should provide the types of data used by the Commission to examine potential violations of its mandatory reliability standards, such as system planning and operations studies, system restoration studies or plans, operating procedures and mitigation plans.
- The Commission will not seek comment on the informational filings, though EPA requires that requests for extra time contain any written comments by other parties. The EPA policy encourages such comments, which should be included in the informational filings.

FERC also encouraged EPA to seek advice from other reliability experts, including state regulators, regional market operators, planning authorities and the North American Electric Reliability Corp. and its affiliated regional entities.

Finally, the Commission will vote on its comments before providing them to EPA, but this will not constitute a final determination that a reliability standard has or will be violated, nor will it be considered a final agency action that would trigger civil penalties or other enforcement actions.