On behalf of the RTOs that submitted comments in this proceeding, we wanted to express again our appreciation for your reaching out to us to discuss the “Reliability Safety Valve” proposal embodied in our Comments in the MACT rule proceeding.

Given the number of questions on language and mechanics at our last meeting, as the Commenting RTOs (PJM, MISO, ERCOT, SPP and New York ISO) we thought it best to put together some draft rule language for your consideration which would set forth our proposal in detail. We offer this as a suggestion and would welcome the opportunity to discuss this with you further.

Just a few points:

1. We’ve written this document in rule format to address the mechanics of the Reliability Safety Valve as applied to both RTO and non-RTO regions. In RTO regions, given our independent non-profit structure and our fiduciary responsibility to ensure the reliability of the grid, we would provide the necessary analyses and certifications to accompany any application from a unit owner for an extension if we deem the unit a “Reliability Critical Unit” through our public planning process. For non-RTO regions, given the lack of an independent system operator, we’ve provided for the initial transmission reliability studies to come from the local Planning Coordinator but, in the case of transmission reliability studies, subject to certification by FERC and, in the case of resource adequacy reliability impacts, subject to analysis by the relevant entity responsible for implementing reserve margin/resource adequacy requirements, with certification by the relevant regulatory authority, such as the states, FERC etc in accordance with their relevant statutes;

2. Although we’ve put forth this role for FERC for purposes of discussion, I need to make you aware that given the pace of events, we have not had the opportunity to fully brief FERC on this proposal. We didn’t want to hold up getting this to you as a draft but intend to reach out to FERC and hope that ongoing dialogue on this issue between the agencies and with the RTOs would continue. I am sending this document to FERC Commissioners and Staff as well;

3. Finally, although we wrote this proposal as addressing deactivation requests, we would expect a similar ability of units which are retrofitting in order to be in compliance with the Rule but can’t get the retrofits completed within the four years of the MACT rule to obtain extensions of time. We didn’t address this issue in this filing but do feel similar flexibility is needed in that area.

I am submitting this on behalf of PJM, ERCOT, MISO, SPP and the New York ISO. We look forward to the opportunity to discuss this further. Please feel free to contact me with any questions or if you wish to discuss further with the joint RTO/ISO group.

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I. Compliance Extension Requests

A. Eligibility

Compliance extensions may be granted to a Reliability Critical Unit ("RCU"). For the purposes of this section, a RCU shall mean an electric generating unit ("EGU") that meets the following requirements:

i. The EGU is subject to the Mercury and Air Toxics (MATS) Rule;
ii. The EGU is part of the Bulk Electric System (BES);¹
iii. The owner/operator of the EGU files notice pursuant to Part B that it intends to deactivate the EGU rather than continue to operate the unit in compliance with the MATS rule;
iv. The EGU is determined, pursuant to Part B of this procedure, to be necessary to maintain the reliability of the BES until alternative transmission and/or market solutions (e.g. new supply or demand response resources) are placed in service that resolve the reliability issue caused by deactivation of the EGU. For the purposes of this section BES reliability metrics include: 1) transmission system reliability and 2) reserve margin/resource adequacy requirements;
v. A solution to resolve the transmission reliability and/or reserve margin/resource adequacy issue(s) caused by the EGU deactivation cannot reasonably be implemented, as determined pursuant to Part D of this rule, prior to the compliance timeline for the MATS Rule and
vi. The EGU Compliance Extension Request meets the requirements of this Compliance Extension Request Procedure.

B. Compliance Extension Period

Compliance Extensions granted pursuant to this section shall be for one year from the MATS Rule compliance date, provided that the extension period shall expire prior to the end of the one year extension period under the following conditions:

i. The solution(s) implemented to resolve the reliability issue(s) caused by the deactivation of the RCU is placed in service prior to the expiration of the one year extension period, in which case the Compliance Extension shall expire promptly after the solution is in service, but in no case later than the end of the one year Compliance Extension; or
ii. Subsequent reliability analysis conducted by the relevant entity(ies) (described in Part D) in the normal course of business demonstrates that the RCU is no longer necessary to maintain reliability of the BES, in which case the Compliance Extension shall expire promptly after such a determination, but in no case later than the end of the one year Compliance Extension.

Supplemental Compliance Extensions may be granted pursuant to this section if the following conditions are met:

¹ For the purposes of this section Bulk Electric System shall have the same meaning prescribed by the NERC Glossary of Terms or any subsequent NERC BES definition as approved by FERC.
i. The initial Compliance Extension Period or previously granted Supplemental Compliance Extensions will expire; and

ii. The solution implemented to address the reliability issue(s) caused by the deactivation of the RCU is not in service despite best efforts to place the solution in service prior to the end of the one year Compliance Extension Period; and

iii. The relevant entity(ies) (described in Part D) determines pursuant to an updated reliability analysis that the RCU is still needed to maintain the reliability the BES.

The duration of Supplemental Compliance Extensions shall be determined by the Administrator. In determining the duration of Supplemental Compliance Extensions the Administrator shall consult with and provide deference to the determination of the relevant entity(ies) that performed the analyses pursuant to Part B of this procedure in order to align the term of the Supplemental Compliance Extension with the expected in service date of the solutions being implemented to resolve the reliability issues caused by the deactivation of the RCU. Any Supplemental Compliance Extensions shall expire prior to the expiration of the applicable period under the following conditions:

i. The solution(s) implemented to resolve the reliability issue(s) caused by the deactivation of the RCU is placed in service prior to the expiration of the Supplemental Compliance Extension period, in which case the Supplemental Compliance Extension shall expire promptly after the solution is in service, but in no case later than the end of the Supplemental Compliance Extension period; or

ii. If subsequent analysis conducted by the relevant entity(ies) (described in Part D) in the normal course of business demonstrates that the RCU is no longer necessary to maintain reliability of the BES, in which case the Supplemental Compliance Extension shall expire promptly upon such a determination, but in no case later than the end of the Supplemental Compliance Extension period;

C. Effect of Compliance Extension

i. Penalties

RCUs granted Compliance Extensions and Supplemental Compliance Extensions pursuant to this section shall not be subject to penalties for violations of the MATS Rule during the terms of such extensions.

ii. Relationship to Other Authorities

Nothing in this section impacts the Administrator’s authority to enter into consent decrees with individual unit owners or the Secretary of Energy’s emergency order authority pursuant to Section 202 of the Federal Power Act.
D. RCU Requirements

An EGU must be an RCU to be eligible for a Compliance Extension or Supplemental Compliance Extension. To qualify as an RCU, an EGU must meet all the requirements of section A(a). The RCU determination required by A(a)(iv) shall be conducted pursuant to this Part D.

i. Performance of RCU Analyses and Certifications

In ISO/RTO regions the RCU analyses and certifications required for RCU eligibility must be conducted and issued by the ISO/RTO for the region in which the EGU is located. The RCU analyses and certification shall be for the part of the BES covered by the relevant ISO/RTO region.

In non-ISO/RTO regions, the Planning Coordinator for the region in which the EGU is located is responsible for transmission reliability analysis. The certification of the analysis shall be provided by the Federal Energy Regulatory Commission. The entities responsible for reserve margin/resource adequacy analysis and certification shall be the entity(ies) responsible for administering and regulatory oversight of reserve margin/resource adequacy requirements, respectively, for the region in which the EGU is located. For example, such entities may include the local utility, the state PUC and/or FERC. The RCU analyses and certifications shall be for the part of the BES covered by the relevant entities described above.

The RCU analyses are subject to regulatory oversight by the FERC and, where applicable, pursuant to state law.

a. ISO/RTO Regions

i. Notice

The EGU shall notify the Administrator the State where the EGU is located and the ISO/RTO that it intends to deactivate the EGU. Notice provided pursuant to this section shall be issued as soon as possible to enable the ISO/RTO to identify and implement alternative solutions to resolve the reliability issues caused by deactivation of the EGU as soon as practical. EGUs seeking a Compliance Extension must provide notice at least 2 years prior to the compliance date of the MATS Rule.

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2 ISO/RTO regions shall include EGUs located in the regions of the United States where the operation of the transmission grids are managed by: ISO-NE; NYISO; PJM; MISO; SPP; ERCOT and the CAISO.
ii. RCU Analyses and Certifications

a. RCU Analyses

An EGU requesting a Compliance Extension or Supplemental Compliance Extension is required to demonstrate that it qualifies as an RCU. RCU designation requires a demonstration that the EGU is needed to maintain the BES reliability. To make this demonstration, the EGU is required to obtain the RCU analyses and certifications required by this section. To be an RCU eligible for a Compliance Extension the RCU analyses must determine the following with respect to the EGU:

1. The EGU is needed to maintain the transmission reliability and/or reserve margin/resource adequacy until alternative transmission and/or market solutions (e.g. new supply or demand response resources) are placed in service that resolve the reliability issue caused by deactivation of the EGU. The reliability determination pursuant to this paragraph shall be for that portion of the BES over which the ISO/RTO has oversight in its capacity as the ISO/RTO for the respective region and the NERC registered Planning Coordinator.
2. Deactivation of the EGU would cause a violation of some or all of the relevant transmission reliability standards and/or would decrease system capacity below the reserve margin/resource adequacy requirement for the relevant region;
3. The transmission reliability and/or reserve margin/resource adequacy solutions (e.g. transmission upgrades or market responses such as new generation or demand response) required to address the transmission reliability and/or reserve margin/resource adequacy issue(s) caused by deactivation of the EGU.
4. The relevant solution(s) identified by the ISO/RTO pursuant to (3) cannot reasonably be placed in service prior to the MATS compliance timelines applicable to the EGU.

ISO/RTO RCU analyses conducted pursuant to this section must be consistent with all relevant FERC or, as relevant, state, authority(ies) and all applicable ISO/RTO FERC approved, or, as relevant, state approved, governing documents and processes (e.g. tariffs, protocols, operating guides, etc.) and applicable NERC Reliability Standards that apply to the ISO/RTO in its capacity as the Planning Coordinator.

b. RCU Certification

The EGU shall obtain a certification from the ISO/RTO describing the results of the RCU analysis, specifically stating the EGU is required to maintain the reliability of the BES pending implementation of solutions implemented to resolve the reliability issue(s) caused by deactivation of the EGU. Certifications provided pursuant to this section shall identify all transmission reliability standards/requirements violated by deactivation of the EGU and/or identify the reserve margin/resource adequacy requirement impacted by the deactivation of the EGU. The certification shall describe why the deactivation of the EGU results in a violation of the relevant standards and/or impacts the reserve margin/resource adequacy requirement. The RCU analysis is to be transparent...
and open pursuant to FERC Order 890 and, in the case of ERCOT, Texas PUC requirements as applicable.

b. Non ISO/RTO Regions

i. Notice

The EGU shall notify the following entities that it intends to deactivate the EGU.

- The Federal Energy Regulatory Commission;
- The entity registered by NERC as the Planning Coordinator for the region in which the EGU is located;
- The entity responsible for implementing the reserve margin/resource adequacy requirements for the region in which the EGU is located; and
- The entity with jurisdiction over the reserve margin/resource adequacy requirements for the region in which the EGU is located.

Notice provided pursuant to this section shall be issued as soon as possible to enable the relevant entity(ies) to identify and implement alternative solutions as soon as practical. EGUs seeking a Compliance Extension shall provide notice to the relevant reliability entities at least 2 years prior to the compliance date of the MATS Rule.

ii. RCU Analyses

An EGU requesting a Compliance Extension or Supplemental Compliance Extension is required to demonstrate that it qualifies as an RCU. RCU designation requires a demonstration that the EGU is needed to maintain the BES reliability. To make this demonstration, the EGU is required to obtain the RCU analyses and certifications required by this section. To be an RCU eligible for a Compliance Extension or Supplemental Compliance Extension the RCU analyses must determine the following with respect to the EGU:

1. The EGU is needed to maintain the transmission reliability and/or reserve margin/resource adequacy until alternative transmission and/or market solutions (e.g. new supply or demand response resources) are placed in service that resolve the reliability issue caused by deactivation of the EGU. The reliability analysis determination pursuant to this paragraph shall be for that portion of the BES over which the relevant entity has oversight in its capacity as the NERC registered Planning Coordinator and/or the entity responsible for the reserve margin/resource adequacy requirement for the region in which the EGU is located. In order to qualify for a Compliance Extension or Supplemental Compliance Extension pursuant to this section deactivation of the EGU would cause a violation of some or all of the relevant transmission
reliability standards and/or would decrease system capacity below the reserve margin/resource adequacy retirement for the relevant region;
2. The solutions required to resolve the transmission reliability and/or reserve margin/resource adequacy issue(s) caused by deactivation of the EGU.
3. The solution(s) identified pursuant to (2) cannot reasonably be placed in service prior to the MATS Rule compliance timelines applicable to the EGU.

iii. Regulatory Certification.

In non-RTO regions in order to qualify as an RCU the EGU shall be required to obtain the following regulatory certifications.

1. **Transmission Reliability Analysis**---The EGU shall obtain a certification verifying the transmission reliability analysis conducted pursuant to Part D. The certification shall be obtained from the Federal Energy Regulatory Commission.
2. **Resource Adequacy Analysis**---The EGU shall obtain a certification verifying the reserve margin/resource adequacy analysis conducted pursuant to Part D. The certification shall be obtained from the regulatory authority(ies) that has jurisdiction over 1) reserve margin/resource adequacy requirements for the region/state in which the EGU is located;
3. **Proposed Reliability Solutions**---The EGU shall obtain a certification verifying that solutions to resolve reliability issue(s) caused by deactivation of the EGU cannot be placed in service prior to the MATS Rule compliance timelines. The certification shall be obtained from the regulatory authority that has jurisdiction over the entity responsible for implementing the solutions; for example, the state PUC for the state in which the EGU is located, FERC, etc.

E. Compliance Extension Request

The EGU shall file a Compliance Extension Request with the EPA that includes the following:

1. Information and/or certifications to demonstrate that the EGU meets the RCU requirements established by section A(a);
2. RCU certification – The EGU shall submit the certification(s) required by Part D.
3. The deactivation notices required by Part D;
4. The type of Compliance Extension requested – e.g. initial one year extension or Supplemental Compliance Extension;
5. A description of RCU operations. This shall describe the expected operations of the RCU if the Compliance Extension is granted;
6. An EGU filing a Compliance Extension Request pursuant to this section shall provide notice to the following:

   i. The state public utility commission for the state in which the EGU is located;
ii. The ISO/RTO in which the EGU is located and that provided the RCU analysis required by Part B; and


F. EPA Action on Compliance Extension Request

The EPA shall act on a Compliance Extension Request no later than 60 days after receipt of a complete application. EPA action shall include one of the following:

i. The EPA shall approve a complete Compliance Extension Request if the relevant RCU analyses demonstrates the EGU is needed to maintain the transmission reliability of the BES and/or the reserve margin/resource adequacy requirements for a region and reliability solutions to address such reliability issue(s) caused by deactivation of the EGU cannot be implemented prior to the compliance timelines of the MACT Rule;

ii. If a Compliance Extension Request is incomplete or the EPA needs additional information the EPA shall inform the EGU that the request is incomplete and shall identify the information necessary to complete the application. The EGU shall provide the information needed to complete the application within 30 days of receipt of the incomplete application. Extensions of this period shall be granted by the Administrator for good cause shown. If the additional information is provided the EPA shall act on the complete application within 60 days in accordance with (i).