

Reliability Concerns? NERC Says Yes; EPA Blasts Flawed Assumptions

November 30, 2011 by [Seth Jaffe](#)

Yesterday, the North American Electric Reliability Corporation, or NERC, released its [2011 Long-Term Reliability Assessment](#). The NERC report identified environmental regulations as one “of the greatest risks” to reliability. Much of the focus of the concern was on EPA’s MACT rule for hazardous air pollutants and its 316(b) rule for cooling water intake structures. While expressing uncertainty about these not-yet finalized rules, the NERC report took an extremely cautious approach, largely assuming the worst in terms of the stringency and inflexibility of these rules.

Appropriate caution? Not according to EPA.

In a [letter to NERC](#), EPA Deputy Administrator Bob Persciasepe accused NERC of simply ignoring what EPA has said regarding the provisions of those rules and how they will be implemented. For example, with respect to the 316(b) rule, NERC assumes that the rule will require closed cycle cooling, even though EPA has explicitly said it will not require closed cycle cooling on all units and the rule will allow the cost of controls and potential impacts on reliability to be considered in determining appropriate technology.

As Persciasepe summarized:

NERC’s draft report describes an extreme outcome that arises from a scenario where the most stringent and costly rules imaginable took effect, and no one at the federal, state, or local level took any steps to ensure the continued reliability of the grid.

Fortunately, the EPA’s analysis and several external analyses show that, where the EPA’s actual rules are accurately characterized, there is no adverse impact on capacity reserves in any region of the country. If isolated, local reliability challenges were to emerge due to individual plant retirements, the Clean Air Act and Clean Water Act provide flexibility mechanisms to ensure that sources can be brought into compliance over time while maintaining reliability.

In my [most recent post](#) on this subject, I noted that a comprehensive look at the reliability issue by FERC would be helpful. While I understand NERC’s approach to err on the side of caution, I agree with EPA that NERC overdid it here. Most of the old plants at risk of retirement are not going to have to install closed cycle cooling. I wouldn’t quite describe the NERC report as Chicken Little, but I don’t think the sky is falling. I’m still waiting for a more balanced and comprehensive review – and still skeptical that such a report would attain universal credibility, even if were to deserve it.

© Foley Hoag LLP. All rights reserved. Attorney advertising. Prior results do not guarantee a similar outcome.