

Thursday, May 05, 2011 6:17 PM ET **Exclusive**

## EPA rules: Potential train wreck or great opportunity?

By [Glen Boshart](#)

Will the many new rules the U.S. Environmental Protection Agency is busy establishing to control the emissions from coal-fired power plants lead to sharply higher power prices and degraded system reliability, or will they stimulate a long-overdue modernization of the power grid and, as a side benefit, job growth?

Several speakers during a May 4 conference sponsored by the Energy Bar Association took the latter position, but not everyone. Alexia Borden of the law firm Balch & Bingham LLP insisted that the onslaught of new EPA regulations will create a colossal "train wreck" because they are on a direct collision course with the need to maintain electric grid reliability.

Borden reasoned that under the current anticipated implementation timelines for the new rules, more than 150 GW of the 311 GW of existing coal-fired capacity will have to be retired or made unavailable by 2015 because the owners simply will not have enough time to retrofit the plants with the pollution control equipment needed to become compliant with the new rules. The inevitable result of the "rushed" promulgation of the rules, according to Borden, will be a nation lacking the generation it needs to maintain system reliability.

### EPA listening

Gina McCarthy, assistant administrator of the EPA's Office of Air and Radiation, discounted the train wreck analogy. She insisted that the potential reliability and cost impacts of the EPA's new rules are "of the utmost consideration" for her agency, and that is why the EPA has been working closely with FERC and the U.S. Department of Energy to model those impacts.

McCarthy acknowledged that the retirement of coal-fired plants in load pockets and other areas could indeed raise reliability concerns, but she said the new rules are being designed to ensure that the power industry can make cost-effective choices to respond to those challenges. Nevertheless, recognizing that the 2015 effective date for many of the new requirements presents a "tight" four-year window for utilities to take action, she stressed that utilities need to plan now how to best clean up their air emissions.

Giving some credence to McCarthy's assertions, FERC Commissioner John Norris insisted that the EPA's rules are being rolled out "in a manageable fashion." They were not "hatched overnight," he observed, noting that a number of utilities foresaw the new emissions restrictions and have planned accordingly, using the many options or tools available to them. As for the rest, Norris said, "we shouldn't have to bend over backwards for those who ignored" the signs that they will need to clean up their air emissions.

Norris further asserted that instead of focusing on the negative aspects of the EPA's rules, the industry should look at the numerous advantages and opportunities the rules offer for those willing to take advantage of them. They should provide "a kick in the pants" to demand-side management options by making them much more cost-effective, he said, adding that the retirement of older, dirtier and inefficient coal-fired plants "is a good thing."

### Gas implications

That said, Norris acknowledged that the EPA's rules will present certain reliability challenges. "When we stack multiple power plants on one gas supply line, what do we do?" he asked. He said pipeline capacity will have to be increased as more coal-fired plants are replaced with those fired by natural gas.

Norris also suggested that any new replacement power plants will have to be built near load centers, given the decade or more it takes to get new transmission lines built to connect more remote power plants. Doing so, however, will put further pressure on natural gas pipelines, Norris said, but he noted that a new gas pipeline can be built much more quickly than an electric transmission line.

McCarthy retorted that she does not want to pick generation fuel supply winners, but merely wants to achieve emissions reductions. Thus, she promised that her agency will work with the "energy experts" to ensure that the new rules will not harm reliability or dramatically drive up power prices. She said the rules will also offer plenty of flexibility so that utilities can choose from a variety of strategies to meet the new requirements.

At the same time, McCarthy said, the EPA "can't play outside the four corners of the law. We have to do what the law requires." She therefore promised to pass rules that will stand up to legal challenges, which also will help provide the regulatory certainty that will allow utilities to have confidence that the investments they make to meet the new requirements will not be for naught after some court overturns a rule.

### Job promoter?

McCarthy further maintained that instead of being a "job killer," as some critics have insisted, the new rules actually will create many new jobs. They will lead to some plants being retired, she said, but the modeling efforts show that the number will be far fewer than many are predicting. Moreover, she said many of the units to be retired would have been retired even absent the new rules due to their age and inefficiency.

Norris agreed, noting that many of the plants to be retired are being run only a few hours a year and "are 60, 70 and 80 years old."

Turning back to the jobs issue, McCarthy acknowledged that some employees from the older units will have to be retrained so they can work at the newer plants, and the EPA is working with various unions to ensure that the job training takes place. "The administration is very sensitive" to the need to deal with the job issue, she said.

McCarthy concluded by stressing the health care and other costs involved in not moving ahead with new clean air rules, including the costs involved when someone has to stay home from work to deal with their own health issues or to care for an ailing child suffering from asthma or other breathing difficulties. "You have to recognize these costs as well," she concluded.

During a subsequent panel, former FERC Commissioner Suedeen Kelly, who works for the law firm Patton Boggs LLP, suggested that even absent the new rules, older coal-fired plants were becoming a legal liability. She specifically cited the 22 settlements utilities have reached with the EPA and U.S. Department of Justice as part of New Source Review and prevention of significant deterioration in air quality enforcement activities. She said the deals have required that generation owners spend more than \$15 billion to install and upgrade emissions controls at targeted facilities, pay an additional \$74 million in civil penalties and commit to spending more than \$610 million on "environmental mitigation projects."

Moreover, Kelly noted that eight of the 22 New Source Review settlements require either the retirement or modification of coal-fired units. For instance, under a settlement announced April 14, the [Tennessee Valley Authority](#) will retire 18 coal-fired plants with more than 2,700 MW of combined capacity, and will have to either retire or make substantial modifications to 12 additional coal-fired plants with 2,800 MW of combined capacity. If the utility decides to retire all 12 of those plants as well, its coal fleet will be cut by almost one-third.

The EPA and the Justice Department have not indicated that they intend to slow down the enforcement efforts, Kelly observed, and, combined with potential new federal laws restricting carbon emissions, she suggested that many utilities would be wise to consider retiring their older coal-fired plants even absent the new EPA rules.

Another former FERC employee, Susan Tierney, who was a high-level FERC staffer and now is managing principal at Analysis Group Inc., agreed with the others who insisted that utilities have plenty of tools to use to meet the new requirements. She also agreed that "it is not hard to project which plants will be in trouble" under the new rules and to plan accordingly.

Tierney further observed that the regions that will be hardest hit by the new EPA rules are those that have little diversity in generation fuel sources. Thus, the new rules will benefit those regions by requiring them to become less dependent on a particular fuel, which she said will make their systems more robust.

Yet another former high-level FERC staffer, Kathleen Barron, who is vice president of federal regulatory strategy for [Exelon Corp.](#), also agreed that utilities need to "get ahead of the issue" by planning now.

She further suggested, as did several other panelists, that one option for replacing the capacity of retiring coal-fired plants is to boost the use of existing gas-fired plants. "A lot of capacity is out there that is not being used," she said, noting that capacity factors (the actual output of a power plant compared with its potential output) for natural gas plants have been far lower than those of coal-fired plants.

Also like many others, Barron downplayed the potential impact of the new rules, noting that from 2001 to 2003, four times more generation capacity was added than is expected to be retired due to the new EPA regulations. "Thus, the sky is not falling," as some have been claiming, she concluded.

### Plants most at risk

Finally, Bhala Mehendale, Fitch Ratings director, said smaller coal-fired plants are more at risk for retirement than larger ones because the relative cost of retrofitting the smaller units is much higher. He added that the 10 states with the most "at risk" coal-

fired capacity (units smaller than 200 MW and older than 50 years) are all east of the Mississippi and total more than 31,000 MW of capacity. Ohio will lose the most total capacity (23,216 MW), according to Mehendale, but Tennessee will lose the most (41%) of its generation capacity by percentage, followed by Virginia (32%) and Michigan (30%).

Nevertheless, the analyst said, "all precedents are for regulated utilities and public power entities to recover expenses and investments resulting from environmental rules." However, coal plants operating in deregulated electricity markets "are at greater financial exposure to costs of compliance" in capital expenditures and retirements.

Copyright © 2011, SNL Financial LC  
Usage of this product is governed by the License Agreement.

SNL Financial LC, One SNL Plaza, PO Box 2124, Charlottesville, Virginia 22902 USA, (434) 977-1600