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SECRETARY

February 29, 2012

By eFiling

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *Commission Role Regarding Environmental Protection Agency's Mercury and Air Toxics Standards*, Docket No. AD12-1-000

To the Commissioners and Staff of the Federal Energy Regulatory Commission,

The Alabama Public Service Commission ("APSC") appreciates the invitation by the Staff of the Federal Energy Regulatory Commission ("FERC"), and particularly FERC's Office of External Affairs, to comment on the Staff White Paper that has been published in the referenced docket. The APSC regulates essential utility services throughout many parts of Alabama, including the electric utility service provided by Alabama Power Company. As a regulatory body, we are responsible for balancing the interests of our regulated utilities with those of the consuming public, with the ultimate goal being the provision of reliable service at rates that are fair and reasonable. In connection with this charge, the APSC must consider the impacts of any pollution control investments, plant retirements, fuel source transitions, investments in new generation plants and purchased power, and other utility actions that may be triggered by compliance with the new Mercury and Air Toxics Standards ("MATS") rule issued by the Environmental Protection Agency ("EPA"). Thus, the APSC is interested in the role the FERC anticipates serving with regard to EPA's consideration of compliance extensions in connection with the MATS rule.

As the FERC and its Staff certainly appreciate, Alabama electricity consumers depend on the reliable supply of electricity at the lowest practicable cost. This reliable supply is important to the quality of our consumers' lives and to the state's economy. Over the course of the MATS rule's progression from proposal to final rule, much discussion was had regarding the potential impact that the MATS rule would have on the reliability of electric supply (locally and overall) and whether the contemplated compliance schedule was a realistic one. Despite repeated expressions of concern by

many in the electric industry, the EPA appears to remain steadfast in its belief that the MATS rule presents no substantial cause for concern. Nevertheless, the EPA has offered a process whereby it would consider exercising enforcement discretion, for units that are “critical for reliability purposes”, through an “Administrative Order” process.¹ And while stating that it intends to consult with reliability experts in this regard (including entities such as FERC, the North American Electric Reliability Corporation (“NERC”), and the APSC), the EPA also expresses its view that extensions under the process are likely to be few and far between and that the ultimate decision is its own.²

The APSC has substantial concerns that the process outlined by EPA does not provide sufficient legal protections or certainty for the electric generator operators or the state authorities, such as the APSC, that regulate them. However, given EPA’s framework, the APSC urges FERC to support requests for an Administrative Order under the process established by EPA, and to use its authority under Section 307 of the Federal Power Act to continue to provide for the reliable operation of the bulk electric system. In this regard, the APSC does not believe that a full, “de novo”, review by FERC would be necessary because any request for an Administrative Order necessarily will reflect the relevant NERC reliability assessments, which depend upon the expertise of the local planning authorities and their assessment of the circumstances potentially affecting reliability. Furthermore, a de novo review could potentially harm an applicant’s request for an extension in that it may indicate to EPA that FERC lacks confidence in the reliability assessments performed by NERC and the local planning authorities.

Moreover, according deference to the analyses undertaken in support of a request will be consistent with the previous observations made by members of the FERC, namely that these initial questions as to how the MATS rule will affect reliability will be identified and addressed by the regional (and local) planning authorities. That of course is not to say that FERC should merely pass over requests; rather, FERC should use its expertise as the federal agency charged under Section 215 of the Federal Power Act to improve and enhance requests for Administrative Orders. Additionally, FERC should elaborate when necessary on the technical consequences associated with potential impacts to bulk electric system reliability so that EPA, and the Administration, will be fully apprised of the circumstances presented by the request.

The FERC also should be cognizant of confidentiality issues and, to the extent possible, not invite unnecessary publicity over the request through its own proceedings (including the conclusion of the FERC with regard to the request). As stated at the outset, the APSC seeks to ensure that consumers under its jurisdiction are provided reliable service at rates that are fair and reasonable. The APSC is concerned that unnecessary publicity over a request could bias market opportunities against the utility seeking the request, especially if the FERC were to question the request or, perhaps more likely, if EPA declined the request. Faced with such a scenario, the APSC would

¹ “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”, p.

² (December 16, 2011), *available at*

<http://www.epa.gov/mats/pdfs/EnforcementResponsePolicyforCAA113.pdf>.

² *Id.*

expect a utility to look to the power markets where feasible to avoid a compromise of reliability. That said, it stands to reason that the power markets will have the same expectations and will price available products accordingly. If such an outcome is avoidable through the utilization of discretion on the part of the FERC – and for that matter, EPA – the APSC would encourage its consideration. At the very least, and to the extent practicable, the FERC should encourage EPA to safeguard competitively sensitive information with the same degree of protection that the FERC itself will apply in accordance with its rules and regulations.

If you have any questions or need additional information, please contact the undersigned at 334-242-9579 or john.free@psc.alabama.gov.

Sincerely,

/s/John D. Free

John D. Free, Director
Electricity Policy Division
Alabama Public Service Commission