THE "SAFETY VALVE" DOES NOT SOLVE THE GRID RELIABILITY PROBLEMS CAUSED BY EPA'S POWER SECTOR RULES:
SUMMARY

Numerous entities with direct responsibility for and expertise in the reliable operation of the electric grid have attested that EPA has significantly understated the effect its suite of power sector regulations will have on the cost and reliability of the nation's electric supply. These entities include the North American Electric Reliability Corporation (NERC), Regional Transmission Organizations (RTOs) like the Southwest Power Pool, PJM Interconnection, the Midwest Independent Transmission System Operator, and the Electric Reliability Council of Texas, many state public service commissions, and many electric utility companies.[1]

As these entities and others have attested, EPA has far underestimated the number of electric generating units that will be forced to retire, the amount of time it will take to plan, permit and construct replacement units, the time it will take to install pollution controls to meet EPA's regulations, the effect on reliability of removing numerous units from service in order to install these controls, and the cost to electric consumers that all of these compliance activities will have in the next several years and beyond. Moreover, as the staff and all five Commissioners of the Federal Energy Regulatory Commission (FERC), as well as the NERC, RTOs and electric utilities have stated, the true impact of the EPA regulations cannot be known until the local grid-reliability impacts of EPA-forced retirements are determined. That study has not been performed, not by NERC, FERC, RTOs or anyone else.

Some have proposed a "safety valve" mechanism to address the reliability impacts of the EPA rules under which EPA would exercise "enforcement discretion" to enter into consent decrees allowing generators to continue in operation in order to preserve electric reliability. But until a true and credible reliability study is done, the contours of the reliability problem that EPA's rules will create cannot be defined with sufficient specificity to formulate a workable solution, including what role a safety valve might play, if any.

Additionally, the safety valve proposal that has been circulated has numerous legal and policy flaws and will not meaningfully mitigate the danger EPA's rules pose to the reliable operation of the electric grid.

The Safety Valve Lacks Legal Foundation

- Blanket authority to EPA under the safety valve to grant compliance extensions conflicts with Section 112(i) of the CAA, which prescribes specific criteria for compliance extensions by the Administrator and the President. EPA's enforcement discretion does not allow it to adopt a program that conflicts with the plain and mandatory language of Section 112(i).

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[1] See accompanying paper entitled "What Those with Responsibility for and Expertise in Maintaining Electric Reliability Are Saying About EPA's Regulations."

- The safety valve cannot be adopted until it has been exposed to notice and comment rulemaking by EPA (and FERC, if FERC is expected to carry out actions to implement it).
- Under the safety valve, FERC is asked to certify reliability-critical units and certify transmission studies. Both of these roles may exceed FERC's authority under Section 215 of the FPA. The safety valve may also unduly discriminate between RTO and non-RTO regions.
- The safety valve does not immunize generators from citizen suits and state enforcement actions even if EPA purports to consent to a violation of Clean Air Act requirements.

The Safety Valve Does not Address Costs and Provides No Meaningful Role for States

- The safety valve mechanism has no provision for considering the cost that will be incurred to ensure electric reliability given the large number of EPA-forced retirements and the number of units that will be required to install expensive controls, and it provides no meaningful role for state PUCs to protect ratepayer interests. The country is being asked to provide a blank check to fund whatever solution proves to be necessary.

The Safety Valve Does Not Consider Forthcoming EPA Regulations

- The safety valve is designed to address the utility MACT rule and, because the Cross-State Air Pollution Rule (CSAPR) rule has already been promulgated, takes that rule into consideration as well. But EPA has also proposed but not yet finalized coal ash and water intake structure rules, and is about to propose performance standards for utility greenhouse gas emissions. The safety valve thus is intended to solve only a portion of the problem EPA's rules will create.

The Safety Valve Won't Work

- The safety valve does not address the many units that are at risk of retirement because they need more time to install controls.
- Utilities may be reluctant to enter into consent decrees that require that they admit they have violated the CAA.
- The exemption process is entirely too burdensome to be attractive and provides no certainty either that the compliance extension will be granted or that revenue will be available to support continued operation if the extension is granted.
- The safety valve doesn't solve the problem because it can't keep units from retiring.
- The "Reliability Critical Unit" designation provides no rate certainty and hence will not disincent retirements.
- The safety valve takes local reliability out of the hands of the experts.
- The safety valve does not solve the Hobson's Choice of units that must choose between running to maintain local reliability or complying with EPA rules.
- The safety valve requires a notice period for retirements that conflicts with RTO tariffs.
- The safety valve has been negotiated without input from non-RTO regions and apparently state commissions in RTOs.
- The safety valve ignores the NERC reliability processes.