

May 23, 2011

**Via E-Mail and First-Class Mail
and Electronic Submission to www.regulations.gov**

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue
Washington, D.C. 20460

Re: Request for Extension of the Public Comment Period on the “National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial Commercial-Institutional Steam Generating Units.” (The Electric Utility HAPs and NSPS rule) Docket No. EPA-HQ-OAR-2009-0234 and EPA-HQ-OAR-2011-0044

Dear Administrator Jackson:

The National Rural Electric Cooperative Association (NRECA) is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric service to approximately 42 million consumers in 47 states. The American Public Power Association (APPA) is the national service organization representing the interests of the more than 2,000 state and locally owned electric utilities collectively serving over 46 million consumers throughout the country. A significant portion of cooperative and public power electric generation is coal and oil-fired based, and thus is deeply affected by the proposed regulations setting maximum available control technology (MACT) and work practice standards to address hazardous air pollutants, and establishing new source performance standards (NSPS). Many of our members are “small business entities” under the Small Business Regulatory Enforcement Fairness Act (SBREFA), and therefore, face an additional burden of evaluating this extremely complex proposal with somewhat limited resources. For reasons stated below, NRECA and APPA are requesting a 60-day extension of the public comment period to expire on September 5, otherwise set to expire on July 5.

As you know, this proposal is extremely complex involving novel applications of emission control technologies, new protocols for compliance demonstrations and compliance assurance monitoring, and work practice standards new to the utility industry. Ultimately, the final regulatory provisions will determine whether a given existing coal- and oil-fired generation unit will continue operating or shut down because compliance

costs associated with these regulations are too expensive or emission reduction technologies are unavailable within the short statutory time frame allowed. Additionally, the viability of any new coal-fired generation also remains to be determined based on this proposal's finality. Even under ideal circumstances, a 60-day comment would be inadequate to address the complex issues inherent in this proposal, considering the overall implications on electric utility industry and especially on smaller electric utility entities.

The circumstances surrounding this rulemaking, however, are far from ideal. For example, the rulemaking docket remains a work in progress with additions and corrections ongoing, possibly reflecting the agency's unnecessary urgency to complete this rulemaking. At the onset, the SBERFA process in connection with this rulemaking was severely truncated in an apparent violation of the agency's own procedures for ensuring the proposal's burdens on small entities are minimized. As information in the rulemaking docket reveals, Small Entity Representatives (SERs) were not provided with regulatory alternatives including descriptions of significant regulatory options, differing timetables or simplifications of compliance and reporting requirements and subsequently presented with an opportunity to respond, among other shortcomings with the process. According to the Report of the Small Business Advocacy Review (SBAR) Panel "SERs stated that they do not believe they were provided the opportunity for effective participation in the Federal regulatory process as required by SBREFA."¹ At the hastily convened meeting, no regulatory options were provided and no follow-up meeting was scheduled. In fact EPA was the only entity represented on the SBAR panel that believed the process presented an adequate opportunity for small entity input as required by SBERFA.

Further, we believe you have underestimated the impacts of the potential errors already associated with this rulemaking. The recently uncovered discrepancies in determination of the mercury limit results in a 20-fold decrease in the stringency of the MACT standard for a major subcategory of new units. For evaluating the potential to construct new units this change could be very significant. Most recently, discrepancies in the docket have also uncovered a significant inconsistency between the forecast of fabric filter (FF) technology retrofits in the Regulatory Impact Analysis² as compared to that in the Documentation Supplement for the IPM Toxics Model Run.³ The RIA forecasts 166 gigawatts of FF technology while the Documentation Supplement shows only 96 gigawatts. FF technology is the most complex and expensive option EPA identifies as being required to comply with proposed HAPs mandates for existing units. Presently, the correct figure is unattainable, although we assume EPA can correct the error. Meanwhile, a reasonable analysis of FF availability for the industry as a whole remains impossible with less than five weeks remaining to comment as it now stands.

¹ Report of the Small Business Advocacy Review Panel, EPA-HQ-OAR-2009 ID# 0234-2921

² Regulatory Impact Analysis of the Proposed Toxics Rule, Final Report, Chapter 8 Figure 8.6, EPA-HQ-OAR-2009 ID# 0134-3051

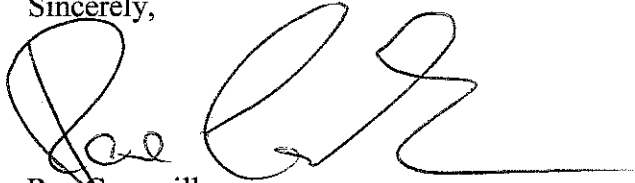
³ Documentation Supplement for EPA Base Case v4.10_Ptox-Updates for Proposed Toxics Rule, EPA-HQ-OAR-2009 ID# 0234-3048

While we are aware of EPA's November 16, 2011, deadline to finalize this proposal, it is a deadline of its own making, and a deadline that can be extended. In the interest of getting this rulemaking right and allowing affected parties' adequate opportunity to comment on this complex and important proposal, fairness requires a 60-day extension.

To summarize, the enormity and complexity of this proposal, the vastness of the underlying support documentation that must be understood and evaluated on a unit-by-unit basis, the inconsistencies contained in this proposal's documentation that must be corrected so as to effectuate meaningful comment, and unreasonably abbreviated SBERFA process for small entity input mandate that the public comment period should be extended 60 days to September 5 of this year.

Thank you in advance, for your consideration of this request. Please do not hesitate to contact either NRECA or APPA should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rae Cronmiller', with a long horizontal line extending to the right.

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