



March 26, 2019

The Honorable William L. Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Assistant Administrator Wehrum:

The Environmental Protection Agency (EPA or Agency) has proposed a Reconsideration of Supplemental Finding for National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-fired Electric Utility Steam Generating Units. EPA has also proposed a Residual Risk and Technology Review (RTR) concurrently with its reconsideration. 84 *Fed. Reg.* 2,670 (Feb. 7, 2019). EPA’s 2016 Supplemental Finding followed the Supreme Court’s decision in *Michigan v. EPA*, which held that EPA must consider costs in evaluating whether it is appropriate and necessary to regulate EGUs.

Driven by several factors—including customer demands, technology developments, and federal and state regulatory obligations—the electric power industry is undergoing a transition of its electric generating fleet that will continue over the next decade and beyond. Concurrent with this transition, electric companies, public power utilities, and electric cooperatives are making significant investments to make the energy grid smarter, cleaner, more dynamic, more flexible, and more secure in order to integrate and deliver a balanced mix of central and distributed energy resources.

As many of our organizations and members noted to you last year, we again ask that EPA complete the statutorily mandated RTR¹ for power plants as expeditiously as possible. Since the Mercury and Air Toxics Standards (MATS) became effective in 2012, it is estimated that the owners and operators of coal- and oil-based electric generating units (EGUs) have spent more than \$18 billion to comply and they have significantly reduced mercury and other emissions, as well as retired assets and invested in new, replacement generation. Given this investment and industry's full implementation of MATS, regulatory and business certainty regarding regulation under Clean Air Act (CAA) section 112 is critical—we urge that EPA leave the underlying MATS rule in place and effective. Many of these same units complying with MATS today are subject to ongoing rate reviews regarding recovery of costs by investor-owned electric companies. In the case of public power utilities and rural electric cooperatives (even those that are rate regulated by state commissions), compliance costs are directly borne by their customers.

EPA should take no action that would jeopardize these investments or the underlying rule. Should EPA take any action that could result in the rescission of the underlying MATS rule, despite the above request, EPA should consider the impacts such an action would have on these costs already borne by industry and how the recovery of these sunk costs could be put in jeopardy, consistent with the Supreme Court's directive in *Michigan v. EPA* to “consider cost.” 135 S. Ct. at 2670 (2015).

Given that industry has already fully implemented MATS, EPA should sustain the MATS rule, complete the RTR, and separately pursue a regulatory process regarding the considerations of costs and benefits analysis under the CAA. EPA's advance notice of proposed rulemaking on *Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process*, 83 *Fed. Reg.* 27,524 (June 13, 2018) can serve as a starting point for this effort. EPA could also apply these principles in a prospective manner in separate rulemakings. Such a rule could establish general principles on cost considerations that recognize that there are statute-specific requirements that may require different consideration of costs, at least with respect to standard setting. Further, it would be appropriate for the rule to be implemented prospectively both to ensure the consistent application of costs and benefits moving forward and to avoid potential disruption to previously implemented regulatory programs where real and significant sunk costs have already been incurred.

We urge EPA to focus on and finalize an RTR for power plants under CAA section 112. A complete and robust RTR would recognize the capital investments already made for compliance and would allow the industry to continue full implementation of the MATS rule. We also urge EPA to consider separately proposing potential technical revisions to MATS unrelated to the standards themselves that could lower compliance costs—such as considering whether performance tests could be performed less frequently if units are running less frequently—while still ensuring that the standards are being achieved. This approach would ensure the standards are being achieved and provide the regulatory and business certainty our members need as they continue to provide safe, reliable, affordable, and increasingly clean energy to their customers.

¹ See CAA sections 112(d)(6) and (f)(2), which require that EPA complete the RTR within eight years, or in this case by April 16, 2020.

Sincerely,

The Edison Electric Institute
The American Public Power Association
The National Rural Electric Cooperative Association
The Clean Energy Group
The Class of '85 Regulatory Response Group
The Global Energy Institute at the U.S. Chamber of Commerce
The Large Public Power Council
The International Brotherhood of Electrical Workers
The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers
The Laborers International Union of North America

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The Edison Electric Institute (EEI) is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for about 220 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 60 international electric companies, with operations in more than 90 countries, as International Members, and hundreds of industry suppliers and related organizations as Associate Members.

The American Public Power Association (APPA) is the national service organization representing the interests of over 2,000 community-owned, not-for-profit electric utilities. These utilities include state public power agencies, municipal electric utilities, and special utility districts that provide low-cost, reliable electricity and other services to over 49 million Americans.

The National Rural Electric Cooperative Association (NRECA) is the national service organization for more than 900 not-for-profit electric utilities that provide electricity service to approximately 42 million consumers. NRECA members own and maintain 2.6 million miles, or 42 percent, of the nation's electric distribution lines and account for 11 percent of the total kilowatt-hours in the U.S. each year. With a commitment to contribute to the vitality and prosperity of the communities served by our members, electric cooperatives are dedicated to a healthy environment, building vibrant rural communities, and providing reliable and affordable electricity to our cooperative consumer.

The Clean Energy Group (CEG) is a coalition of electric generating and electric distribution companies that share a commitment to responsible environmental stewardship. The mission of CEG is to support and enhance the efforts of its members in understanding state and federal legislative, regulatory, and policy developments in environmental and energy areas.

The Class of '85 Regulatory Response Group is a voluntary ad hoc coalition of approximately 30 electric generating companies from around the country that has been actively involved in the development of Clean Air Act rules affecting the electric generating industry for over 28 years. The Class of '85 has written comments on all major stationary source regulations since the early 1990s, and members of the Class of '85 own and operate EGUs in approximately 35 states throughout the United States.

The Global Energy Institute, an affiliate of the U.S. Chamber of Commerce, acts to unify policymakers, regulators, business leaders, and the American public behind a common sense energy strategy to help keep America secure, prosperous, and clean. Through policy development, education, and advocacy, the Institute is building support for meaningful energy action at the local, state, national, and international levels.

The Large Public Power Council (LPPC) is comprised of 27 of the nation's largest public power systems that serve 30 million Americans, about 10 percent of the U.S. population. LPPC members are locally governed and directly accountable to consumers. We are not-for-profit and committed to reliability, affordability and environmental stewardship for the consumers and communities we serve. LPPC advocates for policies that allow public power systems to build infrastructure, invest in communities and provide reliable service at affordable rates.

The International Brotherhood of Electrical Workers (IBEW) represents approximately 775,000 members and retirees who work in a wide variety of fields, including construction, utilities, manufacturing, telecommunications, broadcasting, railroads and government.

Established in 1880, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers is a diverse union representing workers throughout the United States and Canada who are employed in industrial construction, maintenance and repair; ship building; manufacturing; railroads; cement; mining and related industries.

The Laborers' International Union of North America (LIUNA) is a powerhouse of workers who are proud to build the United States and Canada. LIUNA members are a skilled and experienced union workforce trained to work safely in the construction and energy industries. Members build infrastructure - from roads, bridges, and transit to schools and skyscrapers. They are certified to install rainwater catchment systems and trained to build water and sewer systems. Members also work in every area of the energy sector, helping to build solar plants, wind farms, and natural gas and oil pipelines, as well as, being skilled in the maintenance of nuclear and coal power plant facilities.