Kincaid Generation, LLC

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Kincaid Power Plant
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March 31, 2025

Submitted via email to *airaction@epa.gov*
President Donald J. Trump
c/o Administrator Lee M. Zeldin
Office of the Administrator (1101A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Presidential Exemption: *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,508 (May 7, 2024): Kincaid Power Plant Units 1 & 2.

Dear President Trump:

Please accept this letter on behalf of Kincaid Generation, LLC requesting a Presidential exemption under Section 112(i)(4) of the Clean Air Act ("CAA") from compliance with the filterable particulate matter ("fPM") surrogate emission standard for non-mercury metal hazardous air pollutants ("HAP") and the requirement to install continuous emissions monitoring systems ("CEMS" or "PM CEMS") under the above-referenced rule (the "MATS RTR" or the "Rule") for Kincaid Power Plant Units 1 and 2 ("Kincaid"). Kincaid Generation, LLC is requesting a two-year exemption, beginning July 6, 2027, from these requirements for the Kincaid facility.

The MATS RTR amended 40 C.F.R. Part 63 Subpart UUUUU and became effective on July 8, 2024. Under the Rule, Kincaid's electric generating units ("EGUs") are required to reduce fPM emissions from 0.030 lb/MMBtu to 0.010 lb/MMBtu. Compliance is based on a continuous, 30-day rolling limit. In addition, the Rule requires all coal-fired EGUs to install CEMS to implement the revised fPM standard, rather than allowing EGUs to continue to use stack testing to demonstrate compliance. The compliance deadline for meeting the revised fPM standard and for installing and using fPM CEMS is July 6, 2027, but work to design, purchase, and install the necessary controls and the new CEMS would need to begin much sooner.

Under Section 112(i)(4) of the Clean Air Act, the President may issue exemptions "from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4). Accordingly, the President is authorized to exercise his discretion to exempt these units from complying with the MATS RTR where (1) the technology required "to implement" the standard is not available and (2) where it is in the interest of national security. In light of this authority, and in light of the burden imposed on electric

generating facilities by the MATS RTR, EPA has announced the potential availability of such exemptions and asked that requests for exemptions be submitted by March 31. *See* https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information. Consistent with that announcement, and for the reasons set forth below, Kincaid Generation requests a 2-year exemption for the Kincaid Plant from the fPM standard and from the requirement to install and use PM CEMS.

Importantly, EPA has been very clear that the fPM standard and CEMS requirement are completely integrated, such that any exemption must cover both requirements in the Rule. Specifically, EPA explained "that a fPM standard of 0.010 lb/MMBtu . . . is the lowest fPM emission limit possible at this time with use of PM CEMS." 89 Fed. Reg. at 38,534. And EPA identified the revised fPM standard and the PM CEMS requirement as a combined "two-pronged approach," stating that "requiring PM CEMS in addition to a lower fPM limit . . . is the most stringent option that balances the benefits of using PM CEMS with the emission reductions associated with the tightened fPM emission standard." *Id.* at 38,530. In other words, EPA's effort "to implement" its revised standard depends equally on both the more stringent numeric standard for fPM and on the obligation to install new monitoring equipment.

Section I explains that the technology required to implement the Rule's revised fPM standard is not considered available on a continuous basis, and Section II explains that CEMS are likewise unavailable. Given the interdependence of these requirements, however, the unavailability of technology as to either component makes "implementation" of the standard likewise unavailable for the other. Section III concludes that it is in the national security interest to issue an exemption from compliance with the MATS RTR.

I. The Particulate Control Technology Required to Implement the Rule's fPM Standard is Not Available

There are technological and operational limits at Kincaid that make it difficult and expensive to meet the more stringent fPM standard.

EPA based its decision to lower the fPM standard on data from only a select few units, *see* Pet'rs' Brief at 65-68, *North Dakota v. EPA*, No. 24-1119, Doc. 2077742 (Oct. 1, 2024), but not all units can meet the revised limit under all operating conditions. Kincaid currently utilizes an electrostatic precipitator ("ESP") for particulate control. To ensure compliance with the more stringent fPM standard, Kincaid would need to upgrade the existing emission control equipment and/or install new particulate control. EPA did not consider the availability of upgrades to control technologies that would be required to implement the revised standard on a continuous basis or the costs associated with those controls. *Id.* at 68-69. If Kincaid were to rebuild its ESP in an attempt to meet the revised standard, the capital costs per unit could be from $52 million to $148 million. *PGEN Comments on EPA's Proposed Rule: NESHAP Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, Docket No. EPA-HQ-OAR-2018-0794-5994, at 12 (June 28, 2023) [hereinafter "PGEN Comments"]. Such a project is extremely cost *in*effective per ton of fPM removed. *Id.* at 17. Moreover, continuous compliance with the revised fPM standard cannot be guaranteed, even with considerable upgrades or a complete rebuild of the ESP. Instead, it is likely that installation of a new baghouse would be necessary to meet the lower standard. However, this technology is not available because it is designed and installed on a site and facility specific basis and is cost prohibitive. A new baghouse would cost $150-360/kW to install, which does not include operating costs. Ralph L. Roberson, *Technical Comments on EPA's Proposed Rule: Mercury and Air Toxics Standards Risk and Technology Review*, Docket No. EPA-HQ-OAR-2018-0794-5994, at 3 (2023) [hereinafter "PM CEMS Technical Memo"]. Additionally, other

issues exist regarding the installation of a new baghouse, including the space needed for the large footprint a new baghouse requires. We are unaware of any other available particulate control technology that would be cost effective and satisfy space constraints.

Kincaid's operational limitations could also hinder the ability to continuously comply with the fPM standard. Although some units may be able to achieve a rate of 0.010 lb/MMBtu under certain conditions, the Rule requires continuous compliance. Even units that can achieve the limit in ideal conditions may not be able to continuously meet that limit during peak load conditions when they cannot do off-power rapping or maintenance and cleaning of PM controls. During the summer, most units operate at base load and run at high-capacity factors. It may be difficult to maintain optimal operation of control technologies during peak summer conditions unless there are additional outages scheduled for such maintenance, which may not always be feasible. Moreover, the characteristics of coal vary depending on location. Ash content of the coal being fired may impact the ability of units to comply with the fPM limit, regardless of the effectiveness of the control technologies in place. Other operational factors such as cleaning frequency, operational duration, and maintenance frequency may impact the performance of ESPs and a facility's ability to comply with the proposed limit. These concerns are exacerbated by the companion requirement to measure compliance using monitors that have not been demonstrated to be reliable.

II. CEMS Technology is Not Available

The MATS RTR requires coal-fired units to implement the revised fPM standard using CEMS, rather than periodic stack testing. As explained above, this requirement is an integral part of the numeric limit itself. Historically, the Kincaid units utilized quarterly PM stack testing to demonstrate compliance with the standard for non-hg metals and eventually achieved MATS Low Emitting EGU (LEE) status for PM. Although Kincaid has a PM CEMS, it is not utilized for MATS compliance and Kincaid would be faced with upgrading the existing PM CEMS or installing a new one that could be used for compliance with the MATS fPM standard. There are technological limitations, as well as costs and market limits, that make adoption of CEMS by July 2027 unattainable.

PM CEMS does not provide direct measurements; it uses correlation curves to calculate emissions levels. However, the low fPM standard in the Rule makes developing this correlation curve "virtually impossible." PGEN Comments at 22 (citing PM CEMS Technical Memo at 3). Similarly, the QA/QC criterion for CEMS are extremely difficult to meet at such low levels. *See Comments of the Class of '85 Regulatory Response Group on the Proposal on National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, Docket No. EPA-HQ-OAR-2018-0794-5989, at 16 (June 28, 2024) [hereinafter "Class of '85 Comments"]. In fact, at the time of the proposed MATS RTR, no commercially available PM CEMS would have been able to meet the tight confidence and tolerance intervals associated with the low proposed fPM standard. PGEN Comments at 23 (citing PM CEMS Technical Memo at 5). EPA was, thus, forced to address these issues in the final MATS RTR by loosening the QA criterion and correlation procedures. *See* 89 Fed. Reg. at 38,528-29. However, it has not yet been shown that these changes are enough to address the fundamental issue that PM CEMS has difficulty reliably measuring such low fPM levels due to the error rates of the instrument. *See* PGEN Comments at 23 (finding insurmountable the "uncertainties inherent the in the measurement device" and the "problems associated with relative size of the uncertainty to the limited data range of fPM concentrations and the confidence levels and tolerances"); *see also* Class of '85 Comments at 18. And, in reality, units would need to target emissions below 0.010

lb/MMbtu in order to ensure continuous in compliance. *See* Pet'rs' Brief at 72. Therefore, the CEMS technology to demonstrate compliance with the revised fPM standard is unavailable.

Second, there are significant costs and market limitations associated with PM CEMS, which make it "not available." Installing, upgrading, and operating CEMS is more costly than stack testing. *See* PGEN Comments at 25-26. Costs include purchasing and installation of CEMS, as well as potential modifications to the units to accommodate CEMS, extended correlation testing, and annual operational costs. *See id.* at 26; *see also* Class of '85 Comments at 18 (estimating $180,000 to $400,000 for "site preparation and engineering analysis, analyzer equipment and installation costs, and initial PS-11 correlation testing"). This does not include the costs of maintaining a full-time employee to operate PM CEMS and the costs of lost generation during testing events for CEMS. Luminant Comments at 16-17. There are also market factors which limit the availability of installing and operating CEMS by the compliance deadline. There are a limited number of vendors for CEMS, as well as a limited number of professionals certified to install and test CEMS. Currently, two-thirds of facilities utilize stack testing and would need to install CEMS by July 2027, which would overwhelm the current supply of CEMS and the availability of professionals certified to inspect and test the newly installed systems, as well as upgrading existing systems. *See* Class of '85 Comments at 16.

III. It is in the Interest of National Security to Issue an Exemption for the Rule

The requested exemptions from the MATS RTR are in the national security interests of the United States. The Rule adversely affects the nation's energy generation capacity and threatens grid stability and the supply of affordable, reliable energy. The Rule's stringent limits and the high costs associated with compliance, particularly in combination with other rulemakings impacting coal-fired EGUs, place a considerable burden on the operation of the Kincaid units. And MATS rules have historically resulted in the loss of generation capabilities—the 2012 MATS rule resulted in the retirement of approximately 60,000 MW of coal-fired capacity. Pet'rs' Brief at 23. As explained in Luminant's Comments, coal plants "continue to be of paramount importance for grid reliability during the transition to renewables." *Id.* at 29.

Energy generation and grid reliability have, in turn, been identified by the President as issues of national security. As set forth in President Trump's Executive Order ("E.O.") 14156, *Declaring a National Energy Emergency*, the "generation capacity of the United States [is] . . . far too inadequate to meet our Nation's needs" and "a reliable, diversified, and affordable supply of energy" is necessary to ensure "military preparedness." 90 Fed. Reg. 8,433, 8,433 (Jan. 29, 2025). The E.O. continues, "integrity . . . of our Nation's energy infrastructure from coast to coast is an immediate and pressing priority for the protection of the United States' national and economic security," while "insufficient energy production . . . constitutes an unusual and extraordinary threat to our Nation's economy, national security, and foreign policy." *Id.* at 8,433-34. As explained above, the MATS RTR is one of the "policies" that has been identified as contributing to the "inadequate and intermittent energy supply" and "increasingly unreliable grid." *Id.* at 8,433.

Similarly, in E.O. 14154, *Unleashing American Energy*, President Trump acknowledged that prior regulations—which include this Rule—have "limited the generation of reliable and affordable electricity" and, in turn, "weaken[ed] our national security." 90 Fed. Reg. 8,353, 8,353 (Jan. 29, 2025). This E.O. plainly states it is in "the national interest to unleash America's affordable and reliable energy" and that ensuring "an abundant supply of reliable energy" will help "protect the United States's economic and national security and military preparedness." *Id.* Providing an exemption for compliance with the MATS

RTR will achieve these goals of ensuring national security through the supply of reliable energy. Moreover, E.O. 14154 specifically calls for the review and potential rescission of rules like this one, which "impose an unburden on the . . . use of domestic energy resources." *Id.* at 8,354.

Thus, in order to ensure a sufficient and reliable supply of energy, President Trump should use his lawful authority under Section 112(i)(4) of the CAA to grant the requested exemptions from compliance with the standards set forth in the MATS RTR.

If you have any questions regarding this submittal, please contact Jim Ross at Jim.Ross@vistracorp.com.

Sincerely,

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Senior Vice President, Environmental Health and Safety