

Oak Grove Management Company LLC

Oak Grove Steam Electric Station
6555 Sierra Drive
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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); Oak Grove Steam Electric Station Units 1 and 2.

Dear President Trump:

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

The MATS RTR amended 40 C.F.R. Part 63 Subpart UUUUU and became effective on July 8, 2024. Under the Rule, lignite-fired electric generating units (“EGUs”) are required to reduce mercury emissions by 70% to meet a new emissions standard of 1.2 lb/TBtu. Notably, EPA has previously agreed that there is no health-based need for this requirement. Oak Grove is also required to reduce fPM emissions from 0.030 lb/MMBtu to 0.010 lb/MMBtu. Compliance with this revised fPM limit is based on a continuous, 30-day rolling limit. In addition, the Rule requires all coal-fired EGUs to use CEMS to implement the revised fPM standard, which may not be technically feasible at the lower fPM standard. The compliance deadline for meeting the revised mercury standard, fPM standard, and for using PM CEMS is July 6, 2027, but work to design, purchase, and install the necessary emission controls and implement required adjustments to the 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 Oak Grove Units 1 and 2 from complying with the standards set forth in 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, Oak Grove Management requests a 2-year exemption for Oak Grove from the mercury standard, the fPM standard, and the requirement to implement changes to the CEMS.

Section I explains that the technology required to meet the Rule’s revised mercury standard is not available. Section II explains that the technology required to implement the Rule’s revised fPM standard is not considered available on a continuous basis and that the related CEMS changes are likewise unavailable. Section III concludes that it is in the national security interest to issue an exemption from compliance with the MATS RTR.

I. The Technology Required for Meeting the Rule’s Mercury Standard for Lignite-fired EGUs is Not Available

The technology required to continuously meet the revised 1.2 lb/TBtu mercury standard for lignite-fired EGUs in the MATS RTR does not exist. As explained in Petitioners’ merits brief in the case challenging the MATS RTR before the Court of Appeals for the D.C. Circuit, EPA originally set a mercury standard for lignite-fired EGUs based on the control technology (known as activated carbon injection or “ACI”) that was available at the time the mercury standard was first promulgated in 2012. See Pet’rs’ Brief at 16-17, *North Dakota v. EPA*, No. 24-1119, Doc. 2077742 (Oct. 1, 2024). As was recognized in 2012, lignite fired EGUs cannot reliably meet a 1.2 lb/TBtu emission standard for mercury using ACI. See *id.* This remains the case today. In fact, EPA’s own, current data shows that 11 out of 12 lignite facilities have not been able to ever meet the revised standard. *Id.* at 72. Oak Grove, in particular, would need to achieve a mercury removal efficiency of over 96% with no margin for error to meet the new standard. *Comments of Luminant Companies 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-2018-0794-5983, at 23 (June 23, 2023) [hereinafter “Luminant Comments”]. But EPA has never demonstrated that the mercury removal efficiency demanded by the Rule is possible. Pet’rs’ Brief at 79. This level of mercury removal is not possible because ACI encounters a “leveling off” effect, at which there are diminishing emissions reductions when increased sorbents are injected to control mercury. *Id.* at 76. In other words, operators cannot simply “dial-up” the sorbents used in ACI in order to decrease mercury emissions to meet the new standard. And there are no other control technologies available that can further decrease mercury emissions from lignite-fired EGUs. For this reason alone, Oak Grove should be granted an exemption from compliance with the revised mercury standard in the MATS RTR.

In addition to the technological limits to meeting the revised mercury standard, there are also operational limitations associated with the MATS RTR, which make compliance with the standard “not available.” For example, EPA’s lower mercury standard of 1.2 lb/TBtu does not

allow for a reasonable compliance margin. *See* Pet’rs’ Brief at 18; Luminant Comments at 26. EPA also does not appreciate that mercury in lignite is harder to control compared to other types of coal and that the effectiveness of activated carbon in controlling mercury is inhibited by selective catalytic reduction (“SCR”) systems. Luminant Comments at 24-25 (Luminant’s Oak Grove units utilize SCR). These limitations are analyzed in detail in *Site Specific Analysis of Oak Grove Power Plant* by J. Edward Cichanowicz (June 22, 2023) attached to Luminant’s comments.

Finally, even setting aside the technological and operational limitations which would make compliance with the revised mercury standard impossible, the MATS RTR would impose significant costs that would jeopardize the future use of lignite-fired units and imperil grid reliability. Even if existing controls for mercury could be “dialed up,” EPA failed to account for the considerable costs associated with the ACI equipment additions and modifications necessary for increased sorbent injection and the necessary enhancements to other control equipment. Pet’rs’ Brief at 80. Inevitably, operators would also face costs associated with noncompliance when they cannot meet the stringent mercury standard. These costs should be taken into account when considering the unavailability of the technology required for compliance with the Rule. Furthermore, to avoid noncompliance with the Rule’s impossible standard, operators would choose to run their units less – but this comes at a cost to grid stability and reliability. To avoid these problems, President Trump should determine that the technology to implement the revised mercury standard in the MATS RTR at Oak Grove is not available.

II. Particulate Control Technology and CEMS Technology is Not Available

As an initial matter, EPA has been very clear that the revised 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. Part A explains that the technology required to implement the Rule’s revised fPM standard is “not available” on a continuous basis, and Part B explains that changes to the 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.

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

There are operational limits at Oak Grove that make it difficult and expensive to meet the revised 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 meet the new limit under all conditions. Oak Grove currently utilizes a baghouse for particulate control. Even though Oak Grove’s baghouse runs efficiently, the new standard is challenging to meet because not all baghouses were originally designed to meet a limit

this low. In addition, operational limitations could hinder the units' 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 maintenance and cleaning of PM controls. During peak conditions, 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 conditions unless there are additional outages scheduled for such maintenance, which may not always be feasible. Other operational factors such as filter change-out frequency of baghouses impact the performance of controls and, thus, the facility's ability to comply with the proposed limit. These issues make continuous compliance with the fPM standard difficult to ensure.

b. CEMS Technology is Not Available

The MATS RTR requires coal-fired units to implement the revised fPM standard using CEMS. As explained above, this requirement is an integral part of the numeric limit itself. Oak Grove does have PM CEMS; however, these CEMS have not been calibrated and certified to reflect the revised, lower standard. There are technological limitations, as well as costs and market limits, that make using the existing CEMS to demonstrate compliance with a significantly lower fPM standard by July 2027 unavailable.

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 have 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 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 compliance. *See* Pet'rs' Brief at 72. Therefore, the CEMS technology to demonstrate compliance with the revised fPM standard is unavailable.

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

The requested exemptions from the Rule's lignite mercury standard, revised fPM standard, and CEMS requirement 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 Oak Grove. 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.

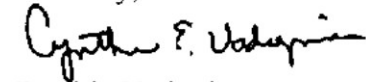
The President has identified energy generation and grid reliability as issues of national security, and it is, therefore, in the interest of the nation to exempt these units from compliance with the MATS RTR. As set forth in President Trump's Executive Order ("E.O.") 14156, *Declaring a National Energy 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 the President has indicated will contribute 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 the requested exemptions 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 undue burden 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 Renee Collins at Renee.Collins@vistracorp.com.

Sincerely,



Cynthia Vodopivec
Senior Vice President, Environmental, Health & Safety