



July 10, 2018

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 indicated to the U.S. Court of Appeals for the District of Columbia Circuit its intent to address the Agency's Final Supplemental Finding for the Mercury and Air Toxics Standards (MATS) in which EPA determined that it was appropriate and necessary to regulate coal- and oil-based power plants under Clean Air Act (CAA) section 112 (Supplemental Finding). 81 *Fed. Reg.* 24,419 (Apr. 25, 2016). EPA's 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.¹

Driven by several factors—including customer demands, technology developments, and federal and state regulatory obligations—the electric power sector 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.

Since the MATS rule became effective in 2012, it is estimated that the owners and operators of coal- and oil-based electric generating units (EGUs or units) have spent more than \$18 billion to

¹ Litigation following EPA's supplemental finding is being held in abeyance at the U.S. Court of Appeals for the District of Columbia Circuit.

comply. These investments, parallel state requirements, other CAA programs, and non-environmental drivers have reduced mercury emissions by nearly 90 percent over the past decade. Given this investment and these emissions reductions, regulatory and business certainty regarding regulation under CAA section 112 is critical—many of these same units are part of ongoing rate reviews regarding the generating fleet operated 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.

To provide this certainty, the Edison Electric Institute (EEI), the American Public Power Association (APPA), and the National Rural Electric Cooperative Association (NRECA), the Clean Energy Group (CEG), the Class of '85 Regulatory Response Group, the International Brotherhood of Electrical Workers (IBEW), and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers ask EPA to complete the statutorily mandated Residual Risk and Technology Review (RTR)² for power plants as expeditiously as possible. We believe a complete and robust RTR will recognize the capital investments already made for compliance and will allow the industry to continue full implementation of the MATS rule, which was completed in April 2016.

It is important to note that all covered plants have implemented the regulation and that pollution controls—where needed—are installed and operating. In traditionally regulated jurisdictions, state public utility commissions in many cases still are in the process of reviewing the cost of these controls for inclusion in rates, along with the related and ongoing operation and maintenance costs. Units that retired in part due to MATS—along with other regulatory requirements, low natural gas prices, resource planning initiatives, and a variety of other factors—have been decommissioned and cannot be reinstated. The U.S. Energy Information Administration reports that facilities representing 87.4 gigawatts (GW), or 29 percent of 2014 coal capacity, added pollution control equipment to comply with the MATS rule.³ As noted above, the industry already has invested significant capital—estimated at more than \$18 billion—in addition to these operating costs, and states are relying on the operation of these controls for their air quality plans.

Therefore, we urge EPA to move forward with an RTR for power plants under CAA section 112 and to leave the underlying MATS rule in place and effective. We also urge EPA to consider potential technical revisions to MATS—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. We believe this approach can provide the regulatory and business

² See CAA sections 112(d)(6) and (f)(2), which require that EPA complete the RTR by April 16, 2020.

³ U.S. Energy Information Administration, *Coal plants installed mercury controls to meet compliance deadlines* (Sept. 18, 2017), <https://www.eia.gov/todayinenergy/detail.php?id=32952>. This period encompasses the time during which most coal-based generators installed pollution controls at EGUs to comply with the MATS rule's April 2015 compliance date and the one-year extension that many coal plants received to finalize their compliance strategies. By April 2016, virtually all coal- and oil-based generators completed their pollution control retrofits.

certainty our members need as they continue to provide safe, reliable, affordable, and increasingly clean energy to their customers.

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 International Brotherhood of Electrical Workers

The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers

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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 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.