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CC: Stephen C. Fotis [scf@vnf.com]; lwisham@firstenergycorp.com; Horton, Melissa H. [MHIGGINS@southernco.com]
Subject: Following up on FY 2019 appropriation for CCR federal permit programs in non-participating states

On behalf of American Electric Power (AEP), FirstEnergy and Southern Company, we're following up on an important appropriation issue for funding the implementation of the coal combustion residuals (CCR) program. In particular, this CCR appropriation issue relates to the provision of the recently passed WIIN Act that expressly requires EPA to receive a specific appropriation before EPA has a mandatory, non-discretionary duty to implement Federal CCR permit programs in non-participating states.

At the outset, it is important to note that we have strongly supported such an appropriation for the last year and have done so independently of the EPA. We will continue to do so again this year for both the FY 2018 and 2019 appropriation bills.

It appears to us that EPA did not include a specific funding request for FY 2019 in its budget justification to the House and Senate Appropriations Committees. Due to this omission, we are therefore at a loss to know how much EPA believes it needs for performing this function of implementing federal CCR permit programs in non-participating states.

This is currently important in the context of the House Interior Appropriations subcommittee attempting to meet all of the requests that they receive, including this one. If the Interior subcommittee does not receive guidance from the Agency on what level of funding is necessary for this function, EPA runs the risk of not receiving adequate funding to perform this important function despite our best efforts to secure the necessary federal funding to administer CCR program in non-participating states.

It is important to underscore that the WIIN Act did not specify the amount that must be appropriated for this purpose. In particular, the statute states that "subject to the availability of appropriations specifically provided in an appropriations Act to carry out a program in a non-participating state, the Administrator **shall** implement a permit program ... [for] each coal combustion residuals unit located in the nonparticipating State." Based on this language in the WIIN Act, it is clear that EPA has a mandatory obligation to implement federal permit programs in non-participating states if Congress makes a specific appropriation to do so in any amount.

This means that such an appropriation, no matter how small, satisfies this statutory requirement and therefore triggers a mandatory obligation for EPA to implement permit programs in non-participating states.

We would therefore respectfully point out that it is critically important that EPA convey to the Senate and House Appropriations Committees how much you believe is necessary for this purpose.

Again, we will be urging the Congress to provide an appropriation for this purpose, and will be doing so independently of the EPA. But if we don't know how much funding EPA believes is needed for this specific EPA permitting function, our ability to make a compelling case for full federal funding for this purpose could be significantly compromised.

Finally, it is likely that Administrator Pruitt, or his designated representative from the Agency, may receive a question on the amount that is needed when he testifies before the Appropriations Committees. So knowing the amount would be useful for that purpose as well.

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