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Attn: Docket ID No. EPA-HQ-OW-2009-0819

Re: Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

The American Coal Council (ACC) submits these comments in response to the Environmental Protection Agency's (EPA) Federal Register Notice of November 22, 2019 of its proposed rule for Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category. The ACC is a nonprofit trade association in its 38th year representing the collective business interests of the American coal industry. Our members include coal suppliers; coal consumers including electric utilities, independent power providers, and industrial consumers; energy traders; transportation companies and terminals; and many companies providing industry support services. Since our member companies touch every aspect of turning one of America's most abundant resources into reliable and affordable electricity for the United States economy, our Association has first-hand knowledge of the direct and indirect impacts of new coal-related regulations and a unique, "boots on the ground" perspective. Coal is also integral to the steel-making process and the industrial production of cement, chemicals, and paper. Our diverse membership base encompasses the entire coal supply chain, and it is from this broad perspective that we assess the impacts of new regulations impacting coal supply and use. While ACC provides these comments from that broad perspective, individual member companies of

ACC may submit separate comments on their own behalf that offer additional or other views.

EPA's proposed effluent limitations guidelines (ELG) regulation would directly affect the members of ACC's coal consumer segment that operate coal generating units. In addition, others throughout the supply chain would be impacted, including for example coal suppliers that produce coal for affected generating units and coal transporters that haul coal to those units.

Generally, ACC supports the ELG changes EPA proposes now to revise portions of the original ELG Rule EPA promulgated in 2015. Widespread concerns were raised about the original Rule due to its complexity and magnitude; unnecessarily high costs; job loss impacts; few or questionable environmental benefits; data/methodologies/analyses used by EPA and lack of transparency regarding such; availability of technology to comply; and the impractical compliance deadline of November 1, 2018. In 2017, EPA took action to postpone the compliance deadlines of the 2015 Rule for flue gas desulfurization (FGD) wastewater and bottom ash transport water (BATW). EPA's newly-proposed rule, for which we are making comments herein, revises requirements for FGD wastewater and BATW.

Incorporation of ACC's July 6, 2017 Comments by Reference

ACC attaches and incorporates by reference into these comments the comments ACC filed on July 6, 2017 in response to EPA's proposed rule for Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.

Those 2017 comments addressed ACC's concerns including the potential for the 2015 ELG Rule to result in additional premature coal generating unit closures, concerns that would be magnified when also considering the implications of EPA's 2015 Coal Combustion Residuals rule (CCR Rule) for solid steam power plant waste. Compliance with either or both of those rules would be burdensome and unnecessarily expensive, in many cases prohibitively so. Thus there would be severe impacts for the nation's coal generating fleet and coal supply chain jobs.

ACC's 2017 comments also stated that compliance with one or both of those rules may have implications for electricity production and reliability. It may increase risk to local, regional, or even national electricity reliability and grid resiliency. It would increase costs for consumers, either due to direct compliance costs or less-direct costs associated with reduced fleet diversity and greater dependence on other non-coal fuels and power generation sources. We also noted then that complying with these and other regulations would mean that even more coal generating capacity would retire, more direct and

indirect coal jobs would be lost, fuel choice and competition would be reduced, and the potential risks to electricity system reliability and resilience would increase. We note now that this view of regulations risk, cost, and negative impacts for coal-related jobs continues.

ELG Revisions for FGD Wastewater and BATW

EPA's new proposal for ELG reflects positive technology development since 2015 for FGD wastewater treatment along with somewhat reduced treatment cost.

ACC supports EPA's setting of the best available technology (BAT) limits for FGD wastewater treatment based on the use of low hydraulic residence time biological reduction (LRTR). This is an improvement over the high residence time biological reduction (HRTR) that was the basis in the 2015 Rule. Generally, LRTR systems are smaller, less complex, and require fewer modifications to a facility's footprint than HRTR systems while achieving similar efficacy.

We also believe it is important for EPA to provide flexibility on the numeric limits for FGD wastewater in the proposed rule. Since EPA relied on pilot studies for its proposed numeric limits, full-scale day-to-day operation and a wide variety of operating conditions should be explicitly considered by EPA when finalizing the numeric limits in the rule.

Pilot projects are typically shorter in duration and use new or relatively new equipment. Thus, they do not account for longer term wear and tear and the variety of circumstances units may encounter over the life span of the installation of control technologies. One specific area of concern ACC is aware of is the performance of ultrafiltration membranes in removing mercury with longer term use.

The wide variety of daily operating conditions encountered includes operating facilities at variable loads, in load-following situations, and in a broad range of weather conditions that necessitate different operational requirements.

ACC supports EPA's proposal to set BAT limits for BATW based on the use of dry handling or high recycle rate systems rather than dry handling or closed-loop systems proposed in the original 2015 ELG Rule. EPA's proposal also appropriately recognizes the need for a wet bottom ash transport system to have a discharge allowance of up to 10 percent of the system volume over a 30-day rolling average to account for operational needs and maintenance impacts and to provide flexibility in addressing site-specific factors.

EPA should also consider including an allowance for additional discharges beyond the 10 percent, 30-day rolling average to appropriately account for operational needs in

response to large scale storm events and natural disasters including floods and hurricanes, or other events that can overwhelm BATW systems.

Compliance Deadlines

EPA's proposal extends the compliance deadline for the new rule to on or after November 1, 2020 but no later than December 31, 2023 for BATW and December 31, 2025 for FGD wastewater.

We suggest that for the sake of consistency and with necessary considerations of compliance with both BATW and FGD wastewater as well as the CCR Rule, the deadline for compliance for BATW should be set as December 31, 2025.

Conclusion

The American Coal Council appreciates this EPA proposal to modify effluent limitations guidelines to adapt the ELG Rule for FGD wastewater and BATW to include newer control systems using lower cost technologies to treat and control wastewater, flexibility in managing those systems, and new compliance dates. EPA has also offered a revised voluntary incentive program that provides additional time, until December 2028, for implementation of the new requirements for plants that adopt additional process changes and controls that achieve more stringent limitations on certain constituents in FGD wastewater.

ACC believes EPA's regulatory imperatives must include flexibility, affordability, and a reasonable glide path for compliance. Coal generation in the U.S. has already been reduced to a share of about 30 percent. With new coal plants not currently being built or planned, our nation will benefit from retaining the remaining coal fleet. A diverse generation portfolio including coal, which acts as both a market and operational hedge, protects reliable electricity and affordable prices for consumers.



July 6, 2017

Mr. Ronald Jordan
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Submitted electronically at <http://www.regulations.gov>

Attn: Docket ID No. EPA-HQ-OW2009-0819

Re: Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

The American Coal Council (ACC) submits these comments in response to the Environmental Protection Agency's (EPA) Federal Register Notice of June 6, 2017 of its proposed rule for Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category. The ACC has been in existence for 35 years and represents the collective business interests of the American coal industry. Our members include mining companies and suppliers, transportation companies and terminals, electric utilities and industrial coal consumers, and many industry support services providers. Since our member companies touch every aspect of turning one of America's most abundant resources into reliable and affordable electricity for the United States economy, our Association has first-hand knowledge of the direct and indirect impacts of new coal-related regulations and a unique, "boots on the ground" perspective. Coal is also integral to the steel-making process and the industrial production of cement, chemicals, and paper. Our diverse membership base encompasses the entire coal supply chain, and it is from this broad perspective that we assess the impacts of new regulations impacting coal supply and use.

ACC's coal consumer membership segment would be directly impacted by EPA's 2015 Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating

Point Source Category (ELG Rule or Rule). The indirect impacts would permeate the entire coal supply chain and beyond it. ACC's comments herein explain the reasons for our support of EPA's proposal to postpone the compliance deadlines of the ELG Rule.

Background

EPA issued the final ELG Rule in November 2015 for new and more stringent best available technology economically achievable (BAT) effluent limitations and pretreatment standards for wastewater streams at steam electric power plants including fly ash transport water, flue gas mercury control wastewater, flue gas desulfurization wastewater, and gasification wastewater. Seven petitions for judicial review of the ELG Rule were submitted. These were consolidated in the U.S. Circuit Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al v. EPA*.

In March 2017, the Utility Water Act Group (UWAG) submitted a petition for reconsideration to EPA and requested suspension of the ELG Rule's approaching deadlines. In April 2017, the Small Business Administration submitted a second petition for reconsideration by EPA. EPA Administrator Pruitt made a decision to reconsider the rule, and EPA filed for and received a stay of the litigation of the ELG Rule by the Fifth Circuit pending such consideration.

The concerns that have been expressed about the ELG Rule as promulgated include complexity and magnitude; unnecessarily high costs; job loss impacts; few or questionable environmental benefits; data/methodologies/analyses used by EPA and lack of transparency regarding such; availability of technology to comply; and the impractical compliance deadline of November 1, 2018.

Moreover, the concerns are greatly magnified when combined with the potential impacts of EPA's 2015 Coal Combustion Residuals rule ("CCR Rule") for solid steam power plant waste. Complying with either the CCR Rule or the ELG Rule would be burdensome and result in additional premature shutdown of coal generating units. Complying with both of these rules would be unnecessarily expensive and in many cases prohibitively so, and thus would have severe impacts for the nation's coal fleet and coal supply chain jobs.

In fact, compliance with one or both of these rules may have implications for electricity production and reliability. It may increase risk to local, regional, or even national electricity reliability and grid resiliency. It will increase costs to be borne by consumers, either due to direct compliance costs or less direct costs associated with reduced fleet diversity and greater dependence on other non-coal fuels and power generation sources.

In addition to the concerns about these two rules, the status, deadlines, and uncertainty regarding other EPA rules impacting coal power plants including EPA's Clean Power Plan causes major complications and concerns about increased costs for compliance or plans for compliance. It is evident that if the power sector is required to also meet these regulations, even more coal generating capacity would retire, more direct and indirect coal jobs would be lost, fuel choice and competition would be reduced, and the potential risks to electricity system reliability and resilience would increase.

These concerns combined with recent actions of the new Administration including executive orders for regulatory reform make it imperative that EPA fully reconsider all aspects of the ELG Rule, and postponing the compliance deadlines is necessary to accomplish this. ACC supports postponing the ELG Rule for a period that would include time for its thorough reconsideration and any promulgation of new compliance dates, which should recognize the multi-year time necessary to engineer, install, and test treatment systems.

ACC's further comments below primarily address three areas: (1) ongoing concerns about EPA's data, modeling, and analyses for the ELG Rule, (2) the extraordinarily high economic costs if the ELG Rule and other EPA rules affecting coal power plants proceed, and (3) the need for review of the ELG Rule in light of new federal regulatory reform requirements initiated by the Administration in 2017.

Ongoing Concerns about EPA's Data, Modeling, and Analyses for the ELG Rule

In UWAG's petition for reconsideration to EPA, numerous issues were addressed pertaining to the data, modeling, and analyses for the ELG Rule. One example is EPA not collecting data on the treatability of selenium and nitrates in flue gas desulfurization wastewater (FGDW) for plants using subbituminous coals or lignite. Such plants make up 25% or more of the industry. Another example is that EPA did not collect data for integrated gasification combined cycle plants (IGCC). Petitioner UWAG referred to a pilot study at a plant burning Powder River Basin (PRB) coal using the treatment technology selected by EPA as BAT, with UWAG stating "indications are that the data show the selenium limits cannot be met". Additionally, UWAG mentions that data from a state-of-the-art IGCC show its inability to meet the ELG's wastewater limits.¹

EPA's ELG Rule could have devastating impacts to the coal industry based on these examples alone. PRB coal comprises about 40% of all coal produced in the U.S. If plants that consume PRB coal couldn't continue burning it because of the ELG Rule,

¹ Utility Water Act Group's Petition for Rulemaking to Reconsider and Administratively Stay the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, March 24, 2017, p. 5.

employment for many thousands of people would be affected. This would be an unacceptable outcome.

In setting the zero discharge standard for bottom ash transport water (BATW), EPA used outdated, insufficient, and unreliable data to determine pollutants of concern to be addressed by the standard. This gives rise to the same types of concerns about the ability to comply and costs to do so.

ACC points to these examples as significant flaws in the ELG Rule that skew both the standards EPA set and the costs for complying with them. Moreover, it appears that technologies beyond what EPA determined might be needed by many plants to comply. However, BAT must be based on available technologies. If the Rule's flaws are not addressed, the real-world implications are that many plants would shut down in the face of the costs and challenges to comply.

These examples and implications are further indication of why the postponement of the rule is needed and its reconsideration justified.

Extraordinarily High Economic Costs of the ELG Rule and other EPA Rules

As with other earlier rules, the compliance costs estimated by EPA and industry are widely different. Power sector company compliance cost estimates for the ELG Rule for only three companies are:

- Dynegy – \$308 million, with \$178 million of that to be spent within three years²
- NRG Energy – \$200 million³
- American Electric Power – \$400-\$550 million through 2023⁴

Smaller public power entities might have lower costs of compliance due to their size and fewer number of plants, but the cost to comply on a per-ratepayer basis would be exorbitant due to their lower number of ratepayers.

EPA assessed the *annualized* cost of compliance with the ELG Rule at \$480 million. However, the costs in the first five years from 2019 through 2023 range from a low of \$858 million to a high of \$1.3 billion, and *total* \$6 billion over just that period.⁵ For benefits, EPA calculated the annualized benefits at \$387.3 to \$478.4 million. This range

² Dynegy Inc., Form 10-K for the year ended December 31, 2016 filed February 27, 2017, p. 18.

³ NRG, Form 10-K for the year ended December 31, 2016 filed February 27, 2017, p. 32.

⁴ Sonal Patel, "EPA Rescinds Effluent Limitations Guidelines", Power Magazine, April 13, 2017 at

<http://www.powermag.com/epa-to-withdraw-obama-era-effluent-limitations-guidelines-rule/?printmode=1>

⁵ EPA, Benefit and Cost Analysis for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, p. 12-3.

includes co-benefits for air quality improvement. Part of these amounts were attributed to CO₂ reduction calculated using a social cost of carbon. Without these co-benefits, the EPA annualized benefits are only \$138.7 to \$229.8 million.⁶ Additionally, President Trump's Executive Order "Promoting Energy Independence and Economic Growth" issued March 28, 2017 ordered the withdrawal of documents implementing the social cost of carbon tool for regulatory impact analysis. This adds to the reasons for EPA to reconsider the ELG Rule and postpone its compliance deadlines.

Thus, even EPA's cost estimates are staggering. Assuming for a moment that there were no technological questions or impediments (which is not the case as detailed above) electricity costs for American families and businesses would rise significantly to pay for compliance assuming affected plants were not shuttered prematurely (which some undoubtedly would be).

Concerns about the ELG Rule's compliance costs grow appreciably when considering the costs of other EPA rules. One such rule, which goes hand-in-hand with the ELG Rule due to the commonality of waste streams produced, is the CCR Rule. EPA estimated the annualized costs of the CCR Rule at \$509 to \$735 million per year and the benefits at only \$236 to \$294 million per year.⁷

In addition to the high costs outweighing the benefits, the CCR Rule was problematic from a policy and implementation standpoint. EPA lacks authority under the Resource Recovery and Conservation Act (RCRA) to implement a state permit program, so the rule was designed to be enforced only by citizen suits or third-party groups. Congress recognized the issues created by this and recently addressed them in the WIIN Act legislation that provides for state programs for CCR implementation. There is also a pending petition by the Utility Solid Waste Activities Group (USWAG) to EPA for reconsideration of the CCR Rule. With these developments, it is possible that changes may occur with the CCR Rule and this may have implications for the ELG Rule. A postponement of the ELG Rule's compliance deadlines would facilitate EPA's coordination between the two rules and allow for time to implement the WIIN Act.

In addition to the ELG Rule and CCR Rule, there is EPA's sweeping Clean Power Plan (CPP) for CO₂ emissions reductions from power plants, which by its design would dramatically transform the way electricity is produced, distributed, transmitted and used in the U.S. EPA projected annual compliance costs in its Regulatory Impact Analysis of \$1.4 to \$2.4 billion in 2020, \$1.1 to \$3.0 billion in 2025, and \$5.1 to \$8.5 billion in 2030.

⁶ EPA, Benefit and Cost Analysis for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, p. 11-3.

⁷ 80 Fed. Reg. at 21,309.

Other estimates were far higher. A November 2015 analysis by NERA Economic Consulting estimated annual energy cost increases for compliance at \$29 to \$39 billion per year.⁸ It also predicted double-digit retail electricity rate increases, and projected overall losses for the U.S. economy of \$64 to \$79 billion over the period 2022 to 2033.⁹

As it had with other rules, EPA relied on the benefits of reductions of other emissions in its estimation of the CPP's benefits, and it relied heavily on the social cost of carbon which is being withdrawn as described above. Now, with the President's March 28, 2017 Executive Order prompting EPA's review and possible revoking, rescinding or revising of the CPP, there may be implications for costs and plants under the ELG Rule. This is another reason to postpone its compliance deadlines.

With regard to the aggregate effects of regulations impacting the coal sector, a study by Energy Ventures Analysis (EVA) in November 2014 incorporated the cumulative cost impacts of EPA regulations including MATS, regional haze, and the proposed CPP. It projected residential, industrial, and commercial customers will pay over \$284 billion more in 2020 for electricity and natural gas than in 2012, a 60 percent increase. The average household bill will increase by \$680 in 2020 compared to 2012. EVA found that on a percentage basis the industrial sector would be hardest hit, with costs 92 percent higher in 2020 than 2012.¹⁰ Some of the cost increase is related to higher demand and pricing for natural gas due to the premature shutdown of coal plants.

The major rules mentioned here were all proposed and finalized by EPA over the period from 2012 through 2015. While any one of them is of concern from a cost standpoint, the lack of coordination among them brings a high level of complexity, heavy administrative burdens, and huge planning uncertainty. Additionally, the cumulative impacts imposed by these rules for compliance costs, jobs, energy costs, and the economy have never been addressed by EPA. These realities strongly reinforce the case for EPA's reconsideration of the ELG Rule and postponement of deadlines. They also go to the heart of the regulatory reform policies discussed below.

New Federal Regulatory Reform Requirements Implications for the ELG Rule

Federal regulatory reform is being guided by two Presidential executive orders issued earlier this year. Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs" was issued by the President on January 30, 2017 and Executive Order 13777, "Enforcing the Regulatory Reform Agenda" was issued on February 24,

⁸ NERA Economic Consulting, "Energy and Consumer Impacts of EPA's Clean Power Plan", November 7, 2015, p. 5.

⁹ *Ibid.*

¹⁰ Energy Ventures Analysis, "Energy Market Impacts of Recent Federal Regulations on the Electric Power Sector", p. 4.

2017. Executive Order 13777 directs federal agencies to identify regulations that eliminate jobs or inhibit job creation, impose costs exceeding benefits, are unnecessary or ineffective, or interfere with regulatory reform initiatives and policies. The ELG Rule clearly meets these criteria, so EPA's proposed postponement of the ELG Rule's compliance deadlines is appropriate and necessary. Executive Order 13771 further directs agencies to achieve a net incremental regulatory cost of zero in fiscal year 2017. This would be accomplished by offsetting the costs of new regulations with cost reductions from existing regulations during this fiscal year. EPA's postponement of the compliance deadlines of the ELG Rule would contribute to regulatory burden reduction requirement of Executive Order 13771.

Summary and Conclusion

The unprecedented number, scope, and costs of the regulations promulgated by EPA over the past several years have been the drivers of the detrimental conditions experienced by the coal industry. Power plants and mines have shut down; tens of thousands of jobs have been lost. The continuing uncertainty of whether power sector companies can operate their coal plants and for how long has already taken a heavy toll. The American Coal Council urges EPA to follow through on the regulatory reform efforts initiated by President Trump and to appropriately consider the costs, benefits, and job impacts of its rules, including the cumulative costs.

The American Coal Council appreciates EPA's reconsideration of the ELG Rule. We strongly support EPA postponing the ELG Rule compliance deadlines. Postponing the ELG Rule deadlines can also provide EPA the opportunity to coordinate ELG Rule activity with other EPA rulemakings.