

STATE OF FLORIDA

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Public Service Commission

August 6, 2012

VIA ELECTRONIC MAIL

Administrator Lisa P. Jackson
U.S. Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue, Northwest
Washington, DC 20460

RE: Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units; Docket ID No. EPA-HQ-OAR-2011-0660

Dear Administrator Jackson:

The Florida Public Service Commission authorized on August 2, 2012 the filing of the attached comments on EPA's recently proposed rule on Greenhouse Gas Emissions. We appreciate the July 18, 2012 letter from Ms. Gina McCarthy stating that the EPA will make every effort to consider these comments.

The staff contact on these comments is Judy Harlow who may be reached at 850-413-6842.

Sincerely,

A handwritten signature in blue ink, appearing to be "R. Brisé".

Ronald A. Brisé, Chairman

RAB:mf

cc: Gina McCarthy, Assistant Administrator
Christian Fellner
Nick Hutson
Lisa Polak Edgar, Commissioner
Art Graham, Commissioner
Eduardo E. Balbis, Commissioner
Julie I. Brown, Commissioner
Office of the General Counsel (C. Miller)

**UNITED STATES OF AMERICA
BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY**

Carbon Pollution Standard for New Power Plants Rule
Docket ID No. EPA-HQ-OAR-2011-0660

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) appreciates the opportunity to comment on this rulemaking. We also appreciate the U.S. Environmental Protection Agency's (EPA) letter dated July 18, 2012, stating that the agency will make every effort to consider the FPSC's comments. The FPSC is charged with ensuring that Florida's electric utilities provide safe, reliable energy for Florida's consumers in a cost-effective manner. Section 366.015, Florida Statutes (F.S.), encourages the FPSC to participate in federal proceedings that impact the utilities we regulate.

We recognize the necessity and role of the EPA to address public health and environmental measures. The FPSC is concerned, however, that the EPA's proposed carbon standard for new fossil-fueled power plants and intention to regulate carbon emissions from modified existing plants in the future has the potential for significant rate and reliability impacts on Florida's energy consumers. EPA's final rules should avoid compromising electric system reliability and allow the maximum compliance flexibility for electric utilities provided for under the Clean Air Act. Electric utilities should be given the flexibility to choose the most efficient, least-cost compliance option to meet public health and environmental goals. The FPSC is concerned that as the rule is currently proposed, electric utilities will no longer consider coal to meet future needs due to the uncertainty of obtaining financing for coal units with high-cost and undeveloped carbon capture and sequestration (CCS) technology. Further, EPA's decision to set a single standard for all fossil-fueled generators based on natural gas-fired combined cycle technology sets a precedent for regulating greenhouse gas emissions from existing coal- and oil-fired generation in the future. EPA must consider the impact of its proposed carbon standard on each utility's ability to meet consumer needs in a cost-effective manner, while maintaining a balanced fuel supply for electric generation. Because a balanced fuel supply can enhance system reliability and significantly mitigate the effects of volatile fuel price fluctuations, it is important that utilities have the greatest possible level of flexibility in their generation fuel source mix.

Background

The proposed Carbon Pollution Standard for New Power Plants rule is of direct concern to the FPSC. The FPSC has authority pursuant to Section 366.04(5), F.S., over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes. The FPSC has full regulatory authority under Chapter 366, F.S., over Florida's five investor-owned electric utilities, including aspects of rates, operations, and safety. The statute provides the FPSC with more limited authority over Florida's 35 municipally-owned and 18 rural electric cooperatives, which includes safety, rate structure, and planning. Pursuant to Section 403.519, F.S., the FPSC is charged with determining need for all new steam electric generating facilities over 75 megawatts (MW).

Florida has a total generating capacity of 58,420 MW (summer). Transmission capability to import energy into peninsular Florida from other states is approximately 3,600 MW. Given Florida's peninsular geography and this existing capacity of transmission interconnections to other states, the opportunity for Florida to import low-cost energy from generating units outside Florida may be limited relative to other states. Currently, more than 50 percent of the electric power in Florida is generated by natural gas, while approximately 27 percent is generated by coal and oil.

Pursuant to Section 366.8255, F.S., Florida's investor-owned electric utilities have the opportunity to petition the FPSC for rate relief for prudently incurred costs to comply with new environmental requirements. The FPSC has implemented this statute through an annual Environmental Cost Recovery Clause. Between base rate proceedings, Florida's investor-owned electric utilities will have the opportunity to recover the costs associated with the proposed New Source Performance Standard rule through this cost recovery clause, subject to FPSC review. Recovery of these compliance costs through a cost recovery clause, as required by Florida law, will have a near immediate rate impact on Florida's consumers.

The proposed rule essentially requires costly, unproven CCS technology for new coal-fired plants, and sets a precedent which could be applied to existing coal- and oil-fired power plants in the future. This could result in the need for high capital cost compliance measures for Florida's electric utilities and consumers. The FPSC is concerned about the impact of these potentially substantial

compliance costs on Florida's consumers, particularly in this time of economic distress and high unemployment. Increases to the cost of electricity are of particular concern in Florida due to the state's unique weather, customer base, and high reliance on electricity for cooling and heating. Florida has the highest number of cooling degree days of any state in the continental U.S., indicating the greatest need for air conditioning in the summer months. Our state's high proportion of residential customers comprises almost 89 percent of Florida's electricity customers, and includes a large population of senior citizens on fixed incomes. Compared to other states, Florida's customers rely more heavily on electricity to meet their energy needs, rather than the direct use of natural gas or other fuels for cooling and heating. Approximately 85 percent of Florida's residential customers' energy needs are met with electricity.

Key Principles

The FPSC supports the general principles for federal environmental regulations as established in the National Association of Regulatory Utilities Commissioner's (NARUC) resolution, entitled "Resolution on the Role of State Regulatory Policies in the Development of Federal Environmental Regulations." The resolution was approved by the Board of Directors of NARUC at its 2011 Winter Committee Meetings in February 2011, and is included as Appendix A. The FPSC further supports the comments specific to the proposed rule filed by NARUC on June 25, 2012, which were based on this resolution.¹ In accordance with the resolution's principles, the final rules should:

- **Avoid compromising system reliability** – Section 111 of the CAA requires EPA to issue standards of performance for emissions from each category or subcategories of new and modified stationary sources that "cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare." Section 111(a)(1) of the CAA defines the term "standard of performance" as "a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." EPA has the authority to determine the categories of stationary sources for which each emission standard is set and then

¹ See RIN 2060-AQ91, filed June 25, 2012, in Docket ID No. EPA-HQ-OAR-2011-0660, by Robin J. Lunt, Assistant General Counsel, NARUC.

sets the standard based on that category's best system of emission reduction. Thus, EPA's designation of the categories of generating units that must meet a new carbon standard is essential in defining the emission limitation each type of generating technology must meet and the technologies necessary to meet this standard.

EPA is proposing to combine its existing categories of electric utility steam generating units (boilers and IGCC units) and combined cycle units into a new category for purposes of regulating GHG emissions. EPA's decision to combine all new fossil-fuel generating units, including those fueled by solid and natural gas fuels, into a single category for setting performance standards for GHGs appears to be unprecedented and has major implications for the standards that must be met by new, and potentially existing, coal- and oil-fired power plants. Combining these types of generators into a single category allowed EPA to set a single standard of 1,000 pounds of carbon dioxide (CO₂) per megawatt-hour based on the demonstrated performance of natural gas combined cycle units. EPA states that "new coal-, coal refuse-, oil- and petroleum coke-fired boilers and IGCC units should also be able to meet this standard by employing carbon capture and storage (CCS) technology." The FPSC is concerned that EPA's proposed single standard based on natural gas combined cycle emissions would essentially preclude the development of new coal-fired facilities (including low emission integrated gasification combined cycle plants) by requiring undeveloped and costly CCS technology.

Further, the FPSC is concerned that EPA's decision to set a single standard for all new fossil-fueled generators sets a precedent which could be applied to existing generators in the future, potentially impacting reliability. While EPA has exempted modified existing units from the proposed rule, EPA has expressed its intention to develop GHG standards for modified units in the future. For the purposes of setting new source performance standards, Section 111(a)(2) of the CAA defines new sources to include modified units. EPA's proposed rule sets a precedent for EPA to employ a single category for setting GHG emission standards for modified power plants. Approximately 27 percent of Florida's electricity needs are currently met with coal- and oil-fired generation, which could be required to install unproven, costly CCS technology if these standards are expanded to modified plants. The FPSC notes that many of these existing plants will require modification to meet the requirements of other EPA rules in various stages of development, including the Cross-State Air Pollution rule, the

Mercury and Air Toxics rule, the Cooling Water Intake Structures rule, and the Coal Residuals rule. Electric generators and their consumers should not be placed in the position where investments to meet one EPA rule trigger an unobtainable GHG standard for existing coal- and oil-fired generators.

- **Minimize cost impacts to consumers and provide an appropriate degree of flexibility for compliance** – In order to minimize costs, each utility should have the flexibility to choose compliance options to meet air emissions standards that best fit the utility’s unique system and customer base. By setting a single standard for all fossil-fueled generators, EPA has essentially required CCS for all new coal- and oil-fueled generators. In the final rule, the EPA should avoid one-size-fits-all mandates that would unnecessarily increase utility costs. The CAA requires EPA to review New Source Performance Standards every eight years. EPA argues that this would allow EPA to revise the standard before CCS is required for new coal units if CCS is not yet technically feasible. Yet there is nothing that prevents EPA from setting separate standards for natural gas- and solid-fueled generators, which would avoid the requirement for CCS before it is technologically feasible. Section 111(a)(1) of the CAA requires EPA to set a standard of performance based on the emissions limitation achievable through the best system of emission reduction, while taking into account the cost of achieving the reduction EPA determines has been adequately demonstrated. CCS is costly and has certainly not been “adequately demonstrated” on the scale necessary for electric generation. Until CCS is feasible and cost-effective, EPA should set a separate standard for coal-fired generators that could be achievable through supercritical or IGCC technology.
- **Recognize the needs of each state and region to deploy a portfolio of cost-effective supply- and demand-side resources based on unique circumstances** – Over the past twenty years, the vast majority of new capacity additions in Florida have been natural gas-fired. EPA’s proposed carbon standard, Cross-State Air Pollution rule, Mercury and Air Toxics rule, and currently low gas prices may further encourage utilities to install natural gas-fired generation or repower existing oil- or coal-fired capacity to natural gas as a compliance strategy. EPA contends that the proposed rule will have little or no cost because utilities are not currently planning to install additional coal capacity. Florida’s utilities currently have not identified the need for new coal- or oil-fired generating capacity in their Ten-Year Site Plans. However, the FPSC believes that utilities should not be precluded from considering coal for future projects

based on EPA's unprecedented decision to set a single standard for GHGs. The proposed rule provides new coal plants with the option to average CO₂ emissions over 30 years, which EPA contends would allow a new coal unit to delay installation of CCS for 11 years and still meet the standard. While long-term averaging of emissions can provide some flexibility, the FPSC questions whether utilities would be able to obtain financing for large projects given the uncertainty surrounding CCS development. In order to provide Florida's consumers with the benefits of a balanced fuel mix, EPA should not set a standard that essentially requires CCS until this technology is proven on the scale necessary for electric generators.

Conclusion

The EPA's proposed Carbon Standard for New Power Plants rule and intention to regulate carbon emissions from modified existing plants in the future has the potential for significant rate and reliability impacts on Florida's energy consumers. By setting a single standard based on natural gas technology, the proposed rule precludes utilities from considering coal-fired generation to meet future needs. The Clean Air Act requires that performance standards be set based on demonstrated control technology, while taking cost into account. Yet the proposed standard can only be met by coal-fired generators through the installation of costly, undemonstrated CCS technology. Given EPA's stated intention to regulate GHG emissions from modified power plants, the proposed rule has introduced uncertainty for electric utilities and has implications for reliability. If EPA expands the standard to include modified power plants, CCS could be necessary at Florida's coal- and oil-fired generating units, and some units would be at risk of retirement. Electric generators and their consumers should not be placed in the position where investments to meet one EPA rule trigger an unobtainable GHG standard for existing coal- and oil-fired generators. EPA's final rules should avoid compromising electric system reliability and allow the maximum compliance flexibility for electric utilities provided for under the Clean Air Act. Electric utilities should be given the flexibility to choose the most efficient, least-cost compliance options to meet public health and environmental goals. The FPSC contends that these goals can only be met by setting separate standards for natural gas and solid fuel generating technologies. Until CCS is feasible and cost-effective, EPA should set a separate standard for coal-fired generators that is achievable through supercritical or IGCC technology.

Attachments: Appendix A - NARUC Resolution

Resolution on the Role of State Regulatory Policies in the Development of Federal Environmental Regulations¹

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) recognizes that the U.S. Environmental Protection Agency (EPA) is engaged in the development of public health and environmental regulations that will directly affect the electric power sector; *and*

WHEREAS, EPA is expected to promulgate regulations to be implemented by State environmental regulators concerning the interstate transport of sulfur dioxide and nitrogen oxides, cooling water intake, emissions of hazardous air pollutants and greenhouse gases, release of toxic and thermal pollution into waterways, and management of coal combustion solid waste; *and*

WHEREAS, NARUC at this time takes no position regarding the merits of these EPA rulemakings; *and*

WHEREAS, Such regulations under consideration by EPA could pose significant challenges for the electric power sector, with respect to the economic burden, the feasibility of implementation by the contemplated deadlines and the maintenance of system reliability; *and*

WHEREAS, EPA is expected to provide opportunities for public comment and input with respect to forthcoming regulations; *and*

WHEREAS, Compliance with forthcoming environmental regulations will affect consumers differently depending upon each State's electricity market and the nature of the decisions made by State regulators; *and*

WHEREAS, Addressing compliance with multiple regulatory requirements at the same time may help to reduce overall compliance costs and minimize risk assuming reasonable flexibility with respect to deadlines; *and*

WHEREAS, State utility regulators are well positioned to evaluate risks and benefits of various resource options through policies that appropriately account for and mitigate the risks arising from compliance with pending regulations; *and*

WHEREAS, Cooperation between utility commissions and environmental regulators can promote greater policy coordination and integration and improve the quality and effectiveness of electricity sector regulation; *and*

WHEREAS, State utility regulators, by working with the power sector and State and federal environmental regulators, can help to facilitate least-cost compliance with public health and environmental goals; *and*

¹ Based upon Resolution on *Implications of Climate Policy for Ratepayers and Public Utilities*, adopted by NARUC Board of Directors on July 18, 2007.

WHEREAS, State utility regulators can help to minimize environmental risk as well as uncertainty regarding reliability and customer rate impacts by requesting regulated utilities with fossil generation to develop plans that evaluate all relevant environmental rulemakings at U.S. EPA; *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2011 Winter Committee Meetings in Washington D.C., urges the EPA to ensure that, as it develops public health and environmental programs, it will:

- Avoid compromising energy system reliability;
- Seek ways to minimize cost impacts to consumers;
- Ensure that its actions do not impair the availability of adequate electricity and natural gas resources;
- Consider cumulative economic and reliability impacts in the process of developing multiple environmental rulemakings that impact the electricity sector;
- Recognize the needs of States and regions to deploy a diverse portfolio of cost-effective supply-side and demand-side resources based on the unique circumstances of each State and region;
- Encourage the development of innovative, multi-pollutant solutions to emissions challenges as well as collaborative research and development efforts in conjunction with the U.S. Department of Energy;
- Employ rigorous cost-benefit analyses consistent with federal law, in order to ensure sound public policy outcomes;
- Provide an appropriate degree of flexibility and timeframes for compliance that recognizes the highly localized and regional nature of the provision of electricity services in the U.S.;
- Engage in timely and meaningful dialog with State energy regulators in pursuit of these objectives; *and*
- Recognize and account for, where possible, State or regional efforts already undertaken to address environmental challenges; *and be it further*

RESOLVED, That NARUC urges State utility regulators to actively engage with State and federal environmental regulators and to take other appropriate actions in furtherance of the goals of this resolution.

*Sponsored by the Committees on Electricity and Energy Resources and the Environment
Adopted by the NARUC Board of Directors February 16, 2011*